SPECIAL BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

HEARING ROOM A

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 24, 2001 10:00 a.m.

Reported By: James Ramos Contract No. 150-01-006

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COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Michal Moore

Robert Pernell

Arthur H. Rosenfeld

STAFF PRESENT

Steve Larson, Executive Director

Stanley Valkosky, Chief Hearing Officer

Bill Chamberlain, Chief Counsel

Kerry Willis

Dick Ratliff

Paul Richins

Sandy Harris

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

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1	PROCEEDINGS
2	CHAIRMAN KEESE: We will this meeting of
3	the Energy Commission to order.
4	Commissioner Rosenfeld, would you lead
5	us in the pledge.
6	(Thereupon, the Pledge of Allegiance
7	was recited in unison.)
8	CHAIRMAN KEESE: Thank you.
9	For this this hearing is principally
10	to take up the issue of the Metcalf Power Plant,
11	and I know there are some people on the phone
12	interested in that issue. At last week's
13	Commission meeting we put over an item on
14	regulations for vote only, after taking all the
15	testimony last week. We are going to start with
16	that. That will probably last us somewhere in the
17	nature of 15 minutes. Once that's done, we will
18	move into the hearing on the Metcalf Power Plant.
19	Commissioner Laurie.
20	COMMISSIONER LAURIE: Thank you.
21	Mr. Chairman, Members of the Commission,
22	I intend this matter was continued primarily to
23	allow my colleague, Commissioner Pernell, to be
24	physically present. We did complete our public
25	hearing on the issue, and the purpose today is to

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1 provide direction to the Siting Committee and to
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- 2 Staff regarding language in proposed regulations.
- I intend to make four motions, Mr.
- 4 Chairman, on the four issues discussed previously.
- 5 The first motion reads as follows. This deals
- 6 with the question of the discretion of the Chair.
- 7 As indicated earlier, I believe this is
- 8 clarification only.
- 9 I move that the Commission initiate
- 10 $\,$ modifications to the siting regulations to read
- 11 substantively as follows.
- 12 Section 1212(c) shall be amended to read
- 13 as follows. Subject to the exercise of the lawful
- 14 discretion of the Presiding Committee Member as
- 15 set forth in Section 1203(c), each party shall
- 16 have the right to call and examine witnesses, to
- introduce exhibits, to cross examine opposing
- 18 witnesses on any matters the Presiding Committee
- 19 Member deems relevant to the -- deems relevant to
- 20 the issues in the proceeding, and to rebut
- 21 evidence against such party. Questions of
- 22 relevance shall be decided by the Presiding
- 23 Committee Member.
- 24 CHAIRMAN KEESE: We have a motion.
- 25 COMMISSIONER MOORE: Well, he has one

- 1 more amendment on 1712(b).
- 2 CHAIRMAN KEESE: Thank you. Thank you.
- 3 All right.
- 4 COMMISSIONER LAURIE: Yeah. In -- in
- fact, doggone it, I -- my mistake. There was a
- 6 concern of Staff with the language, where the
- 7 Presiding Member deems relevant, and -- and I had
- 8 accepted Staff's language of questions of
- 9 relevance should be decided by the Presiding
- 10 Committee Member.
- 11 So it should read, to cross examine
- 12 opposing witnesses on matters relevant to the
- issues, et cetera, et cetera. Questions of
- 14 relevance shall be decided by the Presiding
- 15 Committee Member.
- 16 And then that same language, or nearly
- identical language, needs also to be added to
- 18 Section 1712(b), which also deals with the rights
- of the parties.
- 20 So that is my motion, Mr. Chairman.
- 21 COMMISSIONER MOORE: Second the motion.
- 22 CHAIRMAN KEESE: Motion by Commissioner
- 23 Laurie, second by Commissioner Moore.
- 24 Any discussion?
- 25 All in favor?

1	(Ayes.)
2	CHAIRMAN KEESE: Opposed?
3	Adopted, five to nothing.
4	Thank you.
5	COMMISSIONER LAURIE: Mr. Chairman, the
6	second issue deals with the subject that we
7	debated at length dealing with the question of
8	what conversations can be held outside of a
9	noticed meeting. And I move the following
10	language, in substance. This is Section 1710(a).
11	All hearings, presentations,
12	conferences, meetings, workshops, and site visits
13	shall be open to the public, and and this is
14	added language and noticed as required by law,
15	provided, however, these requirements do not apply
16	to communications between parties, including
17	Staff, for the purpose of exchanging information
18	or discussing procedural issues. Information
19	includes facts, dates, measurements, calculations,
20	and analysis related to the project.
21	Staff may meet with any governmental
22	agency not a party to the proceedings for the
23	purpose of discussing any manner should be any
24	matter related to the project without public
25	notice.

1	And	d t	hen su	bsect.	ion (h)) woul	.d	be
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- deleted. I'll have a comment, if I get a second
- 3 to that motion, Mr. Chairman.
- 4 COMMISSIONER MOORE: I am prepared to
- 5 second the motion.
- 6 CHAIRMAN KEESE: Commissioner Laurie,
- 7 I'm -- also in your sixth line, facts, data, d-a-
- 8 t-a, I believe that's another typo.
- 9 COMMISSIONER LAURIE: Thank you. It
- 10 should be data. Facts, data --
- 11 CHAIRMAN KEESE: Facts, data,
- measurements, et cetera.
- 13 We have a motion by Commissioner Laurie,
- 14 a second by Commissioner Moore.
- 15 COMMISSIONER LAURIE: Mr. Chairman,
- 16 Staff did have preferred language. Mr.
- 17 Therkelsen, who I did discuss this with, did
- 18 indicate to me that he could, quote, live with the
- 19 language as I propose.
- 20 His preferred language would prohibit
- 21 any substantive discussions on matters of
- 22 substantive issues. That -- that, to me, would
- 23 make any modification to the present proposal, to
- 24 the present language as being wasteful and not --
- 25 that language is not acceptable to me.

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1 Thus, my motion as proposed, Mr.
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- 2 Chairman.
- 3 CHAIRMAN KEESE: We have a motion and a
- 4 second. Any discussion?
- 5 COMMISSIONER PERNELL: Mr. Chairman, on
- 6 the motion.
- 7 CHAIRMAN KEESE: Commissioner Pernell.
- 8 COMMISSIONER PERNELL: Mr. Chairman, I
- 9 think it is imperative that we state for the
- 10 regulation that -- the -- the motion is deleting
- 11 (h), which states discussions between Staff and
- 12 other parties concerning Staff position or
- 13 recommendations regarding substantive issues shall
- 14 be noticed. I think that's important. It's
- important for the public confidence in our
- 16 proceedings, and it's also important for Staff in
- 17 terms of guidance.
- 18 Now, without getting into the proposed
- 19 -- without getting into the substance of the
- 20 motion, I would just add a friendly amendment to
- 21 add section (h) in its entirety into 1710(a). I
- 22 would propose that as a friendly amendment to the
- 23 maker of the motion.
- 24 CHAIRMAN KEESE: I -- I don't have --
- 25 did you read section (h)?

1	COMMISSIONER PERNELL: Section (h)
2	CHAIRMAN KEESE: Was it was it the
3	one sentence you read, is that what you're
4	suggesting adding, or is it the
5	COMMISSIONER PERNELL: I'm I'm
6	suggesting adding the one sentence that will give
7	the general public some comfort that substantive
8	issues would not be discussed without notice. So
9	it is the one sentence, Mr. Chairman.
10	CHAIRMAN KEESE: Discussions between the
11	Staff and any other party concerning the Staff's
12	position on recommendations regarding substantive
13	issues shall be noticed.
14	COMMISSIONER MOORE: Well, that Mr.
15	Chairman, that's that's the essence of what Mr.
16	Therkelsen proposed, and I I think Commissioner
17	Laurie indicated that that wasn't wasn't
18	acceptable to him. My sense is that for
19	discussions to take place that are of the nature
20	that Commissioner Laurie is talking about, and for
21	which we have a couple of convenient examples
22	recently, it seems to me that the point raised by
23	Commissioner Pernell is is not is not really
24	necessary. I think that the amendment takes it
25	into account

1	We're all sensitive to what he's what
2	he's saying, but it seems to me that it it
3	doesn't clarify it. And the whole purpose of
4	going through this exercise is to clarify what can
5	and can't and can't happen.
6	COMMISSIONER PERNELL: Well, Mr.
7	Chairman, the maker of the motion can deny my
8	friendly amendment, and I will oppose his
9	amendment, and then we can move on.
10	COMMISSIONER LAURIE: The maker of the
11	motion cannot accept Commissioner Pernell's
12	amendment, Mr. Chairman.
13	CHAIRMAN KEESE: Thank you.
14	Any other comments?
15	We have a motion and we have a second.
16	All in favor?
17	(Ayes.)
18	CHAIRMAN KEESE: No.
19	COMMISSIONER PERNELL: No.
20	CHAIRMAN KEESE: Approved, three to two.
21	COMMISSIONER LAURIE: Thank you, Mr.
22	Chairman.
23	The next item, I move the Commission
24	initiate modification to the siting regulations to
25	read substantively, as follows, Section 1207(c).

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1
         This deals with Intervenors, and all it indicates
 2
         is that a person whose petition to intervene is
         granted shall have the rights and duties of a
 3
         party under these regulations. And those rights
         and duties are spelled out in other sections.
                   I offer that language as proposed in
         Section 1207(c), Mr. Chairman.
                   CHAIRMAN KEESE: Do I have a motion?
 9
                   COMMISSIONER LAURIE: And I so move.
                   CHAIRMAN KEESE: Motion, Commissioner
10
         Laurie.
11
                   COMMISSIONER MOORE: Second the motion.
12
13
                   CHAIRMAN KEESE: Second, Commissioner
14
         Moore.
15
                   Any discussion?
                   COMMISSIONER MOORE: Only a comment that
16
17
         I think that we did work this one out while
         Commissioner Pernell was on the phone. And I
18
         think this represents a reasonable compromise to
19
20
         try and get everyone's point of view together. So
         I -- I think this one solves what we were -- what
21
22
         we were after.
                   COMMISSIONER LAURIE: I -- I had
23
24
         proposed, Commissioner Moore, deletion and
         clarification of some other sections. I accept
25
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1 Staff's comments in regards to such, and I'm
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- 2 satisfied with the language that they have
- 3 proposed.
- 4 CHAIRMAN KEESE: All in favor?
- 5 (Ayes.)
- 6 CHAIRMAN KEESE: Opposed?
- 7 Adopted, five to nothing.
- 8 COMMISSIONER LAURIE: Thank you, Mr.
- 9 Chairman.
- 10 The last item deals with the
- 11 relationship between Staff, our Staff, and staff
- of other local governmental agencies, and what do
- we do with the reports and information that have
- 14 been provided by such other governmental agencies,
- 15 pursuant to the provisions of Section 1714.5.
- I move that the Commission initiate
- 17 modifications of that section to read
- 18 substantively as follows. Adding subsection (d),
- 19 consistent with Section 1747, comments and
- 20 recommendations submitted to the Commission
- 21 pursuant to this section regarding the project's
- 22 conformance with applicable laws, ordinance and
- 23 standards under the agency's jurisdiction shall be
- given due deference by the Commission Staff.
- I've changed this language to be more

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1
         specific and limited to make sure that we're
 2
         dealing with comments and recommendations that are
         in conformance with laws, ordinance and standards,
 3
         and modified the language to utilize the term "due
         deference," and all that is as proposed and
         recommended by Staff, Mr. Chairman, and I so move.
                   CHAIRMAN KEESE: Motion by Commissioner
         Laurie.
                   COMMISSIONER MOORE: Second.
 9
                   CHAIRMAN KEESE: Second by Commissioner
10
11
         Moore.
                   Any discussion?
12
13
                   All in favor?
14
                   (Ayes.)
15
                   CHAIRMAN KEESE: Opposed?
                   Adopted, five to nothing.
16
                   COMMISSIONER LAURIE: Thank you, Mr.
17
         Chairman. That's all I have.
18
                   CHAIRMAN KEESE: Thank you. That will
19
20
         dispense of the regulations.
                   COMMISSIONER PERNELL: Mr. Chairman,
21
22
         before we dispense with this, let me just state
23
         for the record that, first of all, this issue is
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not dead on 1710(a). We're -- we're going to have

a workshop, and -- and I am very adamant about not

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limiting the public's participation. I am very
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- 2 adamant about this Commission's perception of --
- 3 of doing substantive deals behind closed doors,
- 4 and I will continue my efforts to advocate on the
- 5 public's behalf on this issue. I think it's
- 6 wrong, and I don't mind stating that.
- 7 Thank you, Mr. Chairman.
- 8 COMMISSIONER LAURIE: I would only note,
- 9 Mr. Chairman, that all of these actions are
- 10 consistent with my view of the best interests of
- 11 the public, as well, however we may choose to
- 12 define that term.
- 13 CHAIRMAN KEESE: Thank you. And I will
- 14 note --
- 15 COMMISSIONER PERNELL: Commissioner
- 16 Laurie --
- 17 CHAIRMAN KEESE: -- I will note for the
- 18 record that this is the start -- this is the start
- of an administrative proceeding on this issue,
- 20 which will have full public hearing and
- 21 discussion. It is just a start.
- The other item on our agenda today is
- the Metcalf Power Plant, and a recommendation for
- 24 approval of the Presiding Member's Proposed
- 25 Decision.

1	Before we get into this issue, we have a
2	number of filings that have been made, and
3	filings and comments that have been made, and
4	using due diligence, I guess, we are interpreting
5	some of them as perhaps making motions regarding
6	this proceeding that must come before this
7	Commission.
8	Mr. Valkosky, would you guide us through
9	some of these? And I have a suggestion that you
10	start, I believe it's the Santa Teresa, Number 3.
11	CHIEF HEARING OFFICER VALKOSKY: Yes.
12	Since the release of the Revised Presiding
13	Member's Proposed Decision on August 24th, we've
14	had several filings which were explicitly motions
15	and which I have construed as motions. Several of
16	those the Committee has acted upon. Others,
17	because of their timing and nature, the Committee
18	has not acted upon, and I would suggest the
19	Commission consider action upon it today.
20	First, there's a filing on behalf of the
21	Santa Teresa Citizens Action Group, who is
22	represented by Mr. Volker. There are essentially
23	three elements to this filing. I think the first
24	two are, one hour for oral argument and a motion
25	to reopen the evidentiary record, are intertwined,

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1 although I would suggest you consider the --
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- 2 specifically the motion to reopen the evidentiary
- 3 record.
- 4 But most importantly, and I think this
- will influence the balance of today's proceeding,
- Mr. Volker has a motion that Chairman Keese recuse
- 7 himself or be disqualified from acting upon this
- 8 matter by the full Commission. So I think, since
- 9 that's really influential on the balance of the
- 10 proceedings, I think that's the first thing you've
- 11 got to address.
- 12 Next, Intervenor Californians for
- 13 Renewable Energy have filed what I construe to be
- 14 two motions. One is a demand to correct or cure
- 15 violations of the Open Meeting Act, and secondly,
- 16 and again, this is my construction, an appeal of
- the Committee's earlier ruling denying CARE's
- 18 motion to relocate the -- the hearing to San Jose.
- And you may wish to ask Mr. Boyd to
- 20 clarify those elements to see if they are still in
- fact right, or if they are subsumed in today's
- 22 proceeding. I'm quite frankly not sure of the
- status of -- other -- other than the Committee has
- 24 not specifically reacted to those two.
- 25 CHAIRMAN KEESE: Thank you. Why don't

1 we take them -- why don't we take the motion to

3 Mr. Chamberlain.

recuse first.

2

- 4 CHIEF COUNSEL CHAMBERLAIN: Yes, Mr.
- 5 Chairman. I'd like to address that motion.

owns more than half a million dollars in stock of energy companies, many of which are regulated by

The motion asserts that Chairman Keese

9 the Commission. The only evidence offered for

this assertion is the citation to an article that

11 was published in the San Francisco Chronicle,

12 which actually gave a very false impression of the

facts by stating that he owned up to \$510,000 in

14 energy stocks.

In fact, the reporter knew that the real value of energy stocks that were in his portfolio at that time was well below ten percent of that

18 figure.

19

20

21

22

23

24

As the Commission is aware, earlier this year Chairman Keese had 401(k) account holdings in three managed portfolios, in which he exercised no control over the decisions of which stocks were bought and sold. The portfolios look very much like broadly diversified mutual funds, which are

25 completely exempt from disclosure under the Fair

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1 Political Practices Act.
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Chairman Keese has explained to the Fair

Political Practices Commission that he believed

that his 401(k) account was invested in broadly

diversified mutual funds that are not reportable

under California law. Chairman Keese divested

himself of all of the managed portfolios after he

learned that they were not exempt from being

reportable and could result in conflicts of

interest. Thus, he no longer owns any energy

stocks.

Within the managed portfolios there were a few energy related stocks, but only a small number, a tiny fraction of the total investment, were companies that have business before the Commission. Several of the energy companies were firms that operate in other countries.

I've compared the energy stocks held in Chairman Keese's managed portfolios at the time of the Chronicle article with the energy holdings that he would've had if he had owned, instead, an exempt S&P 500 index fund. I found that he actually owned considerably less in the managed portfolios in dollar value in energy firms than he would have if his holdings had been in the exempt

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1 index fund.
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2.4

Chairman Keese has explained the facts

-- these facts to the Fair Political Practices

Commission and has asked them to investigate the

extent to which he may have inadvertently had any

holdings that could represent conflicts of

interest under California law.

For today, the most important facts are that Chairman Keese's holdings at no time included the Calpine Corporation, and he owns no energy stocks today. California law only requires a decision maker to recuse himself, or herself, from making a governmental decision if it is reasonably foreseeable that the decision could have a material financial effect on a financial interest of the decision maker.

The motion suggests that ownership of stock in competing companies, that is, competitors of Calpine Corporation, should also be a basis for -- for disqualification. Under California law, that would only be true if it were reasonably foreseeable that the Commission's decision on the licensing of this one power plant would have a material financial effect on one or more of those competing firms.

1	This point is no longer relevant,
2	because Chairman Keese sold all of his holdings.
3	But if we were assessing the impact of this
4	decision on competing firms, it is likely that we
5	would find that we would conclude that no
6	conflict could be found because it is too
7	speculative whether the decision would have a
8	financial effect on competitors of Calpine that
9	would be legally material.
10	Since Chairman Keese has not owned
11	Calpine Corporation and owns no energy stocks
12	today, he is not prohibited from participating in
13	this decision.
1 4	I therefore recommend that the
15	Commission deny the motion to disqualify Chairman
16	Keese for bias, inasmuch as no case has been made
17	that any of his past or present financial holdings
18	would materially affect would be materially
19	affected by the Commission's decision.
20	I would ask Chairman Keese to confirm
21	the facts as I have presented them, that they're

I would ask Chairman Keese to confirm

the facts as I have presented them, that they're

true, and then I would suggest that he not vote on

the motion. If you deny the petitioner's motion

disqualify him, then he can vote on the

decision on this project.

CHAIRMAN KEESE: Thank you, Mr.
Chamberlain. And I would confirm that the facts
as you've led them out are accurate.
Do we have we have a motion in front
of us?
COMMISSIONER MOORE: Mr. Chairman, given
the statement of counsel, I believe it's
appropriate to move to deny the motion as
presented.
CHAIRMAN KEESE: Motion by Commissioner
Moore.
COMMISSIONER PERNELL: Second.
CHAIRMAN KEESE: Second by Commissioner
Pernell.
I will not vote.
All in favor of the motion?
(Ayes.)
CHAIRMAN KEESE: Opposed?
Adopted, four to nothing, one
abstention.

21 Thank you.

I was also asked to voluntarily recuse

23 myself, and I choose not to.

We will then, Mr. Valkosky, proceed to

25 the other two motions that you had given us. Will

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1 you -- by Santa Teresa. Would you lay them out
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- for us again? And then -- lay the both of them
- 3 out, and then I'll ask counsel to tell us whether
- 4 we have a fair understanding of what --
- 5 CHIEF HEARING OFFICER VALKOSKY: You
- 6 mean counsel for Santa Teresa, Mr. Volker.
- 7 CHAIRMAN KEESE: Right. Counsel for
- 8 Santa Teresa.
- 9 CHIEF HEARING OFFICER VALKOSKY: Very
- 10 briefly, the remaining two portions of Santa
- 11 Teresa's motion are intertwined. One asks for an
- 12 hour to present its position before you, and part
- 13 of that hour, I presume, would be used for their
- motion to reopen the record.
- 15 Santa Teresa essentially alleges that
- 16 since the evidentiary record in the Metcalf case
- 17 was closed in approximately March of this year,
- 18 that the world has essentially changed, that
- 19 plants both approved by the Commission,
- 20 specifically some of the 21-day peakers, as well
- as other cases currently or expected to be soon
- 22 pending before the Commission, would essentially
- obviate the need for and any of the benefits
- 24 associated with the Metcalf project.
- The Committee does discuss the benefits

reflected in the record of the Metcalf project at

some length in both the local systems engineering

3 and the alternatives section.

Secondly, Mr. Volker asserts that the
record should be reopened because the Bay Area Air
Quality Management District did not issue its
required permits in a manner in accordance with
its own rules and regulations, and that those are
therefore invalid. I understand that Santa Teresa
currently has that matter pending appeal before
the Bay Area Air Quality Management District
Hearing Board.

I think that's a fair summary of the basics of the motion.

15 CHAIRMAN KEESE: Mr. Volker, could you

16 -- we're not asking for a debate on this issue.

17 I'm -- my question would be have we heard a fair

18 presentation of the motions, and did you -- did

19 you consider the motions and are we -- have we

20 characterized them fairly?

MR. VOLKER: Yes. They are motions, and
I believe that a careful review of the 20 pages,
approximately, of our comments submitted on
September 7 would identify each and every issue on
which -- or which we advance in support of the

- 1 motions.
- 2 And I would suggest that the Commission
- 3 should review the argument presented in the
- 4 comments, rather than rely on a very truncated,
- 5 foreshortened summary. I do not accept the
- 6 summary as equivalent to a careful examination of
- 7 the 20 pages of facts advanced in support of the
- 8 motion.
- 9 And I -- I realize that the Commission
- 10 has scheduled this matter so that the merits of
- 11 the motion perhaps would be debated at a later
- 12 point, perhaps in our argument on the merits of
- 13 the project itself. If the Commission wishes me
- 14 to advance argument on the merits of the motion
- 15 right now, I will do so.
- 16 CHAIRMAN KEESE: I don't believe so. I
- 17 -- excuse me. I think we're -- we're going to try
- 18 to dispense with a series of motions, that would
- 19 -- precludes moving forward. You're welcome to
- 20 comment during the hearing.
- MR. VOLKER: I will reserve my comments
- on the merits of the motion for that period of
- time that's been set aside for Santa Teresa's
- comments on the merits, then.
- 25 CHAIRMAN KEESE: Thank you.

1	CHIEF COUNSEL CHAMBERLAIN: Mr.
2	Chairman, I believe the record should show that
3	the the 20-page motion has been before the
4	Commission, and the Commissioners have had copies
5	of it.
6	CHAIRMAN KEESE: Yes. And, at least
7	this Commissioner has has read the entire
8	motion.
9	Commissioner Laurie.
10	COMMISSIONER LAURIE: Well, my only
11	question would be, Mr. Chairman, I'm ready to take
12	action on the request at at this time. Mr.
13	Valkosky, Stan, is it your recommendation that we
14	deal with the motion, with that particular motion
15	at this time?
16	CHIEF HEARING OFFICER VALKOSKY: That
17	that is certainly an option. You have essentially
18	two choices. You can take action now, if you've
19	reviewed Mr. Volker's filings and have decided one
20	way or another as to the merits of those filings,
21	or you could suspend your action until you have
22	heard all of the presentations on the body of the
23	Revised Presiding Member's Proposed Decision.

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papers will show that he takes issue with certain

24

I think an inspection of Mr. Volker's

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1
         of the statements in the Proposed Decision itself.
 2
                   COMMISSIONER LAURIE: Do you have a
         recommended preference, Mr. Valkosky, as to how
 3
         you think we should handle it? I -- I, too, am
         familiar with the substance of the motion, and so
         I don't need to delay a proposed action on -- on
         the motion itself.
                   But from an administrative perspective,
 9
         what do you think is a better way to handle it?
                   CHIEF HEARING OFFICER VALKOSKY:
10
         Normally -- normally, I would say dispose of it at
11
12
         the beginning. In this case, because of the
13
         degree of public involvement and the wide ranging
14
         nature of the comments, I would change my normal
15
         recommendation and I would say I think I would
         vote on the reopening before I voted on whether or
16
17
         not to accept the Presiding Member's Proposed
         Decision.
18
                   By doing this, you will have the benefit
19
20
         of having considered all the comments related to
21
         you by all the parties.
22
                   COMMISSIONER LAURIE: Okay. Well --
                   CHIEF HEARING OFFICER VALKOSKY: And I
23
24
         think you all have a --
                   COMMISSIONER LAURIE: -- don't forget to
25
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1 remind us to take action on the motion.
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- 2 CHIEF HEARING OFFICER VALKOSKY: Yeah.
- 4 not what I would normally recommend, but I think
- 5 in that way you will have the benefit of having
- 6 been exposed to all the views.
- 7 CHAIRMAN KEESE: Thank you, Mr.
- 8 Valkosky. I believe that's what we'll do on that
- 9 one.
- 10 On the other -- do you feel the same way
- about the other two motions? Or shall we --
- 12 CHIEF HEARING OFFICER VALKOSKY: I'm
- sorry, Mr. Keese.
- 14 CHAIRMAN KEESE: The other two motions,
- 15 shall we --
- 16 CHIEF HEARING OFFICER VALKOSKY: The --
- 17 CHAIRMAN KEESE: Mr. Boyd's motions.
- 18 Shall we take those --
- 19 CHIEF HEARING OFFICER VALKOSKY: -- the
- one hour -- okay. That is something, my
- 21 recommendation would be to see how many people are
- going to be here to participate, and --
- 23 CHAIRMAN KEESE: Yes. Yes, I -- I'll --
- we'll take care of the one hour --
- 25 CHIEF HEARING OFFICER VALKOSKY: -- and

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1 you allocate the time.
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- 2 CHAIRMAN KEESE: -- yes. And the other
- 3 motion was?
- 4 CHIEF HEARING OFFICER VALKOSKY: Okay.
- 5 The other motions are filed by Californians for
- 6 Renewable Energy. One, and it was actually filed
- 7 in regards to the September 12th hearing, alleging
- 8 a violation of the Open Meetings Act. I quite
- 9 frankly don't know whether Mr. Boyd wishes to
- 10 pursue that one on behalf of CARE, since we have
- 11 since re-noticed it. I suggest you address that
- 12 question to Mr. Boyd, if he is available.
- 13 And second, the -- and again, the appeal
- 14 -- what I construe as the appeal to the
- 15 Committee's earlier ruling concerning the denial
- 16 of Mr. Boyd's motion to move this hearing to San
- Jose.
- 18 Those, I think, after hearing from Mr.
- Boyd, are perfectly ripe for your action at this
- 20 time.
- 21 CHAIRMAN KEESE: Thank you.
- 22 CHIEF COUNSEL CHAMBERLAIN: Mr.
- 23 Chairman, I would certainly advise that the first
- 24 motion relating to the alleged violation of the
- Open Meetings Act is certainly moot, because it

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1 related to the noticing for the 12th. This
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- 2 hearing was noticed on the 14th. There has been a
- 3 full ten days' notice.
- 4 CHAIRMAN KEESE: Mr. Boyd, do -- is Mr.
- 5 Boyd present?
- 6 MS. HARRIS: He is teleconferencing.
- 7 CHAIRMAN KEESE: Is Mr. Boyd on the
- 8 phone?
- 9 MS. HARRIS: He's just in a listening
- 10 mode only. He cannot speak at the moment, until
- 11 we ask him to.
- 12 CHAIRMAN KEESE: Yeah. I would -- I'm
- 13 going to ask, then, Mr. Boyd to comment as to
- 14 whether that motion is moot. We've heard -- okay.
- MR. BOYD: Hello.
- 16 CHAIRMAN KEESE: Mr. Boyd, we've heard
- from our legal counsel that because of the
- 18 postponement of the hearing that the motion on the
- 19 -- regarding the Open Meeting Act is essentially
- 20 moot. Would you agree with that?
- MR. BOYD: Yeah.
- 22 CHAIRMAN KEESE: Thank you.
- 23 We will consider that motion moot.
- The second, your second motion was an
- 25 appeal of the -- of our previous decision. Did

```
1
         Mr. Valkosky fairly summarize that?
 2
                   MR. BOYD: Basically the second motion,
 3
         my understanding was in response to Mr. Kreamer's
         ability to participate. And I -- Mr. Kreamer is
         present, or represented on the phone, or
         something.
                   CHIEF HEARING OFFICER VALKOSKY: If I
         could add a bit of clarification.
 9
                   CHAIRMAN KEESE: Mr. Valkosky.
                   CHIEF HEARING OFFICER VALKOSKY: Mr.
10
         Oliver Kreamer is a member of the public. Mr.
11
12
         Boyd filed his initial motion, and I have
13
         construed as a subsequent motion, in order to
         accommodate -- it was Mr. Boyd's belief that we
14
15
         should accommodate Mr. Kreamer --
                   CHAIRMAN KEESE: I believe Mr. Kreamer
16
17
         is on the phone.
                   CHIEF HEARING OFFICER VALKOSKY: Right.
18
19
         And our office has been in contact with him as
20
         recently as Friday, and my secretary, who is
         manning the phones here, has provided Mr. Kreamer
21
22
         the number. I don't know whether he --
                   CHAIRMAN KEESE: And I believe he is on
23
24
         the -- he is on the phone. So he -- is that --
```

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does that take care of that one, Mike?

1	MR. BOYD: You bet.
2	CHAIRMAN KEESE: All right. That will
3	dispense with those two motions are both moot.
4	As we start this proceeding, I will
5	mention that two of our Commissioners are slated
6	this afternoon to start a power plant siting case
7	in Colusa County. And therefore, it is my
8	intention, as we start this proceeding, to move
9	forward, and we will continue and we will press on
10	without lunch, until we have finished our
11	finished this proceeding.
12	As indicated, we are not inclined we
13	have denied one motion for an hour's worth of
14	testimony, and we are not inclined to grant
15	another.
16	What I will ask is how many members of
17	the audience care to speak to this issue, and then
18	we will attempt to allocate time. I have nine
19	blue cards that have been presented to me, and I
20	see a tenth arising in the audience. We are I
21	would ask how many people we have on the phone.
22	MR. BOYD: I'm interested.
23	CHAIRMAN KEESE: I know I'm sure Mr.
24	Boyd and Mr. Kreamer will be interested.

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How many people do we have on the phone?

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1 MS. HARRIS: Two, Mr. Kreamer and Mr.
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- 2 Boyd.
- 3 CHAIRMAN KEESE: Okay. I am -- I am
- 4 assuming that Mr. Boyd and Mr. Kreamer. Mr.
- 5 Valkosky.
- 6 CHIEF HEARING OFFICER VALKOSKY: Mr.
- 7 Chairman, I have been informed that a Ms. Roeder,
- 8 from Great Oaks Water District, also intends to
- 9 call in for a brief statement. I don't know
- 10 whether or not she has, but --
- 11 CHAIRMAN KEESE: Okay. And that was
- 12 Roeder?
- 13 CHIEF HEARING OFFICER VALKOSKY: -- an
- 14 Intervenor informed me that was her intention.
- 15 Betty Roeder.
- 16 CHAIRMAN KEESE: Okay. It looks like --
- it looks to me like we're approaching 15
- 18 witnesses. We will -- when we get to the time for
- 19 witnesses, we will proceed to see how much time we
- 20 can allocate, and how much time the parties wish
- 21 to take.
- The Committee released the Initial PMPD
- on June 18th, 2001, following consideration of
- 24 written comments and those presented at a July
- 25 30th conference. The Committee then published a

```
1
         Revised PMPD on August 24th. The Committee
 2
         requested written comments on the Revised PMPD be
         filed by September 7th.
 3
                   We have received written comments on the
         Revised PMPD from the Applicant; the City of San
         Jose; Californians for Renewable Energy;
         Intervenor Alton; Intervenor Ajlouny; Intervenor
         Santa Teresa Citizens Action Group; Intervenor
         Garbett; the California Public Employees for
         Environmental Responsibility; Sobrato Development.
10
                   In addition, Intervenor Scholz has
11
12
         requested opportunity to address the Commission,
13
         and Intervenor Robert Williams will also -- I
         quess I can say be on -- apparently be present. I
14
15
         see Mr. Williams is present, and would like to
         participate. Mr. Oliver Kreamer, as I mentioned,
16
17
         wishes to participate by teleconference.
                   The Committee has prepared and
18
         distributed a brief errata to the Revised PMPD. A
19
20
         copy is included.
                   Where shall we start. Applicant.
21
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MR. HARRIS: Thank you, Mr. Chairman.

Jeff Harris, on behalf of Calpine/Bechtel.

I'll have a -- a few comments towards

25 the end, but I want to actually turn over the

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1 microphone to Ken Abreu, who's the Development
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- 2 Manager, for the majority of our comments.
- 3 MR. ABREU: Thank you, Commissioner
- 4 Keese.
- 5 First of all, I'd like to thank the CEC
- for its efforts in this case. This was a very
- 7 long and highly contested, complex and
- 8 controversial proceeding. I believe that the CEC
- 9 Staff should be complimented for their hard and
- 10 thorough work, conducted in a very professional
- 11 manner to very high standards.
- 12 I think also the Committee should be
- 13 commended for their dedication and time and care
- in reviewing this case, and their openness to hear
- 15 all sides, and in their patience and thoroughness
- in going over each of the issues that were raised
- 17 during the case.
- This process produced a Revised PMPD
- that is a delicate and prudent balance of all
- 20 these various competing forces. I believe that
- 21 all parties probably would like to see some
- 22 changes in that PMPD, but I believe that what the
- 23 Committee has crafted is a proper and wise
- 24 decision in this complex issue. This project has
- been held to a higher standard with mitigation

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1
        more than any other project in the state.
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- 2 We ask that the Commission today approve the PMPD as proposed, and Calpine and Bechtel are 3 prepared to move forward with the project, if approved.
- I think it's important in considering the approval of this project, and that you have a voice of some opposition, but I would point to two 9 findings noted in the -- in the Proposed Decision.
- One states that the South Bay Area is 10 the most generation deficient major urban area in 11 12 the State of California. Another finding is that 13 San Jose and the Silicon Valley area will at some point between 2003 and 2008 fail to meet WSCC 14 15 criteria for prevention of voltage collapse and criteria for local area generation. 16
- 17 Now, these two facts, combined with the fact that -- that San Jose/Silicon Valley has been 18 and will continue to be one of the primary drivers 19 20 of the economy of the State of California, and the 21 country, and, to some extent, the world, make it important that reliable, clean, economical power 23 be provided for this area.
- 24 The final finding, I'll note, in that PMPD, states, the MEC is required for public 25

22

1 convenience and necessity, and there are not more

- 2 prudent and feasible means of achieving such
- 3 public convenience and necessity.
- This is a historic vote today, in a
- 5 historic proceeding. Calpine/Bechtel are prepared
- 6 to move forward, if the Commission approves the
- 7 project.
- 8 Thank you.
- 9 CHAIRMAN KEESE: Thank you.
- 10 MR. HARRIS: Mr. Chairman, just a couple
- of quick comments, as well, and then we'll proceed
- 12 here.
- 13 I wanted to say a couple of things about
- 14 the record in this case. Quite frankly, the
- 15 record in this case is very strong, and I want to
- 16 emphasize that, because your decision here today
- is based upon that record, and we're very proud of
- 18 the record that has been put together here. The
- 19 evidence supporting the decision is in that
- 20 record.
- 21 We have had a chance, obviously, to
- review comments filed by other parties, as well.
- Some of these arguments you're going to hear today
- are essentially attempts to re-litigate issues
- 25 that have been thoroughly litigated, and so to

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1 that extent I don't think they're relevant to your
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- 2 -- to your decision today. But we're prepared to
- 3 address those issues, if you like.
- 4 You're also going to hear some new
- 5 theories that we haven't heard up until these
- 6 recent filings, and I think that's a result of --
- 7 of where we are in the process. But again, I
- 8 think what you'll find is a lack of authority for
- 9 the new theories you're seeing put forth, and so
- 10 rather than attempting to address each of those
- individual issues, or to highlight what we think
- 12 you'd like to hear, what we'd like to do is make
- ourselves available to respond as issues come to
- 14 your attention that you're interested in speaking
- 15 about further.
- 16 Thank you.
- 17 CHAIRMAN KEESE: Thank you.
- 18 Staff.
- MS. WILLIS: Thank you. My name is
- 20 Kerry Willis. I'm Staff Counsel for the Energy
- 21 Commission Staff, and I've represented the Staff
- for the last two and a half years of these
- 23 proceedings. I have a few brief comments, and
- then I'd like to turn it over to our Project
- 25 Manager, Paul Richins.

1	First I'd like to state that this has
2	been a particularly complex, very public, and
3	often difficult case. The Energy Commission Staff
4	on this project put in long hours to thoroughly
5	examine the environmental, public health and
6	safety, and engineering issues associated with
7	this project, and I want to express my
8	appreciation for their hard work.
9	I would like to thank our Project
10	Managers, Lorraine White and Paul Richins, my co-
11	counsel, Dick Ratliff, Assistant Chief Counsel
12	Arlene Ichien, and our land use analyst, Eric
13	Knight, who, among other things, coordinated the
14	LORS compliance/non-compliance table that's found
15	in the back of the Revised PMPD.
16	Staff filed written comments on the PMPD
17	and attended the PMPD conference in July. We did
18	not file any further substantive comments on the
19	Revised PMPD. We reviewed the other parties'
20	comments, and have agreed to the changes proposed
21	by the Applicant. We will also be available to
22	respond to the issues that are brought up in other
23	parties' comments, but will not address them at
24	this time.
25	In our Final Staff Assessment, Staff

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1
         determined that this project would have
 2
         significant environmental impacts in the areas of
         prime farmland conversion and visual impacts. The
 3
         PMPD did not agree with the Staff's findings in
         those areas. However, we do agree with the PMPD
         that the project will not conform with all local
         LORS, and we further agree that -- with the
         recommendation of approval for the Application for
         Certification for this project, and overriding the
         project's non-conformance with local LORS.
10
11
                   CHAIRMAN KEESE: Thank you.
12
                   Mr. Richins, I had -- I had planned to
13
         call you earlier, but now is your time, Mr.
14
         Richins.
15
                   MR. RICHINS: Good morning,
         Commissioners. Thank you very much for this
16
17
         opportunity to address the Commission. Staff
         would like to make a few brief comments, giving
18
19
         you background on how the Staff arrived at the
20
         decision to recommend approval of this project,
21
         and why we continue to recommend approval of the
22
         Metcalf Energy Center.
23
                   This project's been in the making now
24
         for two and a half years, at least here with the
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25

Energy Commission. Over the last two and a half

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1
         years, we've heard -- we've held more than 20
 2
         publicly noticed workshops, all conducted in San
         Jose. Several of those workshops were held
 3
         jointly with the City of San Jose and Councilwoman
         Charlotte Powers and her District 2 Metcalf
         Advisory Committee. In addition to these
         workshops, the Committee for this siting case held
         16 days and nights of Evidentiary Hearings, all
         down in San Jose.
                   During the Staff's workshops, many
10
11
         issues were discussed, at the encouragement of the
12
         Intervenors and the City of San Jose, as well as
13
         the public. Issues such as noise impacts on
14
         humans as well as animals, reclaimed water
15
         emission impacts on the groundwater table, air
         quality, visual resource issues, impacts of the
16
17
         vapor plume, ammonia spills, toxics and
         groundwater. We also talked a lot about
18
19
         biological resources, the red-legged frog, and the
20
         bay checkered spot butterfly, among other issues.
                   These and many other issues were
21
22
         discussed at length in our workshops, and we
23
         appreciate the comments of the Intervenors, the
```

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public, and the City of San Jose. They challenged

us with many of their creative ideas and concepts.

24

25

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1 Some we agreed with, and some we did not.
```

- 2 However, in the end, I feel that the Staff
- 3 recommendation was improved because of their
- 4 determination and creativity providing input to
- 5 Staff.
- In the Staff recommendation and our
- 7 testimony, we had approximately 192 Conditions of
- 8 Certification for both operation and construction
- 9 of the project.
- 10 Approximately 15 Intervenors have
- 11 participated in the proceeding, and this is
- 12 possibly a record number of Intervenors. The CEC
- 13 process is complicated and not easily understood,
- 14 and so consequently Roberta Mendonca and her
- 15 staff, Kerry Willis, Dick Ratliff, Arlene Ichien,
- 16 from our Legal Office, Eric Knight, Lorraine White
- 17 and myself, spent many hours on the phone and at
- 18 workshops, providing assistance and explaining the
- 19 process to the Intervenors, the public, and the
- 20 press. Providing information and providing
- 21 advice.
- On May 15th, last year, 2000, Staff
- 23 released its Preliminary Staff Assessment. In
- 24 that document we identified several areas
- 25 requiring additional information. That document,

```
1
         by its very nature, is draft, and so it had no
 2
         recommendations, and it was for discussion
         purposes. Staff held approximately -- well, we
 3
         did, we held six days and nights of workshops on
         the Preliminary Staff Assessment. We did
         additional research and gathered additional
         information.
                   The Final Staff Assessment and our
         recommendation was released October 10th, 2001.
         At that time, the document recommended approval
10
         for the project. The decision to recommend
11
12
         approval was not taken lightly by the management
13
         here at the Energy Commission. In fact, Bob
14
         Therkelsen, the Deputy Director, met with the
15
         entire Metcalf team, made up of 24 specialists in
         their different disciplines. We had a discussion,
16
17
         a very open discussion, which he led, and the
         conclusion from that meeting with Staff was an
18
         overwhelming consensus to recommend approval for
19
20
         the project.
                   There were five major reasons, I
21
22
         believe, Staff would articulate that they
23
         recommended approval.
2.4
                   First, the project would not result in
         any significant impacts on public health and
25
```

1 safety, air quality, biological resources, or

- 2 water resources.
- 3 Two, the project would provide benefits
- 4 to biological resources and water resources.
- 5 Three, the project would improve the
- 6 reliability and efficiency of the electric system
- 7 and provide millions of dollars in savings to
- 8 ratepayers.
- 9 Four, the project would reduce the
- 10 likelihood of rolling blackouts in the greater San
- 11 Jose area.
- 12 And fifth, the project would provide
- 13 substantial revenues to schools, libraries, parks,
- 14 and the City of San Jose, without demanding many
- 15 support services in return.
- 16 Contrary to what you may hear today,
- 17 Staff recommendation was the result of a thorough
- analysis, and the expert opinion of the entire
- 19 team, not the opinion of a single individual. The
- 20 consensus of the Intervenors, you may hear -- or,
- 21 wait, excuse me. The concerns of the Intervenors
- you may hear today are not new. They have been
- discussed and re-analyzed, and re-discussed in
- over 20 public workshops, and also in the
- 25 Evidentiary Hearings.

1	Staff has reviewed the recent filings of
2	the City of San Jose, the Intervenors, and CARE,
3	and nothing has been provided that would cause us
4	to change our recommendation or change our
5	position. We therefore continue to recommend
6	approval of the Metcalf Energy Center.
7	Thank you.
8	CHAIRMAN KEESE: Thank you.
9	Without setting any timelines, I think
10	we've set a nice precedent here with two
11	reasonably brief presentations.
12	I am going to ask the presenters of
13	written testimony if they would like to expand on
14	that testimony. Obviously, there's no reason to
15	read into the record written documents they've
16	submitted.
17	I will start with the order in which I
18	have them here, with the City of San Jose.
19	MS. PREVETTI: We're here just to answer
20	questions, if you have questions on our
21	CHAIRMAN KEESE: Thank you. The City of
22	San Jose is here to answer questions. That
23	speeded up our process quite significantly.
24	The Intervenor, Californians for
25	Renewable Energy, CARE. Mr. Boyd, I believe I

```
1 believe I've been able to hear you, Mr. Boyd, so
```

- 2 I --
- MR. BOYD: Right there.
- 4 CHAIRMAN KEESE: -- you may be on the
- 5 line.
- 6 MR. BOYD: Can you hear me?
- 7 CHAIRMAN KEESE: Yes.
- 8 MR. BOYD: Okay.
- 9 CHAIRMAN KEESE: I heard you shuffling
- 10 your papers on your desk. So I -- I felt you were
- 11 still there.
- MR. BOYD: I was.
- 13 CHAIRMAN KEESE: Thank you.
- 14 MR. BOYD: Okay. I'll go ahead and make
- my statement.
- 16 Having done so in the past, I'm well
- 17 accustomed to having our demands requesting
- 18 comments ignored, and recognizing this is
- 19 absolutely futile, but still hoping that somehow,
- 20 sometime the CEC and related public agencies will
- 21 abandon or significantly reduce the deeply
- 22 entrenched policy of expediting the certification,
- 23 construction and operation of power plants at all
- 24 costs, particularly at the cost of environmental
- 25 protection and its reasonable maximization under

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1 CEQA, for the avowed purpose of coping with a
2 perceived of an emergency level energy crisis of
3 undetermined nature, scope and effect, CARE, its
4 members individually and on behalf of the general
5 public, respectfully submit the following
6 comments.
```

For your record, please reflect that for myself, CARE, its members, and other members of the public, I object to this project, the process under which it was reviewed and the exertion of intense, unprecedented pressure to speed up the siting, construction and operation of the MEC and other power plants, with the predominant criterion for project approval being how fast MEC and other power plants can be gotten online, and the effect this pressure and this expedite at any cost policy has had and is having on analysts, Staff members, CEC and other public agency officials and their work product, all for the avowed purpose of coping with a perceived of emergency level energy crisis of undetermined nature, scope and effect, CARE, its members individually and on behalf of the general public, for the record, have objected, and will continue to object to.

25 What the Commission is being pressured

```
to do, and what it has done and is doing, is
 1
 2
         continuing perpetrating what is in essence a fraud
         on the people of this state and this nation. CARE
 3
         provides additional corroborative evidence of this
         from today's San Jose Mercury News, in an attached
         article which I've docketed, titled "San Jose
         Power Plant Critic Silenced, Group Says", in which
         Karen Schambach of PEER, which they quote, there
 9
         is intense pressure to get the plant licensed,
         said Public Employees for Environmental
10
         Responsibility, a Washington, D.C., non-profit
11
12
         group which investigated allegations that
13
         Commission analysts were intimidated by their
14
         superiors in downplaying the plant's impacts on
15
         the environment.
                   What the Commission is being asked to
16
17
         continue giving is a essentially the false
         impression that the -- that the environmental
18
         protection mandated by CEQA and other statutes is
19
20
         being maintained, while the process of getting and
21
         keeping more power plants online to end the energy
22
         crisis as soon as possible is being implemented.
23
         As you well know, this is just simply not true.
24
                   Thank you. That's all I have.
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CHAIRMAN KEESE: Thank you, Mr. Boyd.

25

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1 Mr. Alton. Is Mr. Alton here?
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- 2 Mr. Ajlouny.
- 3 MR. AJLOUNY: Thank you, Commissioner.
- 4 As you well know, I've asked also for an hour,
- 5 knowing that the -- the complexity of this whole
- $\,$ case and the time that I personally have spent, I
- 7 thought was only owed to me.
- 8 Commissioner, I'm a little concerned
- 9 that a hearing like this is so controversial that
- 10 many Staff members have said it'd probably take
- 11 all day. Now to hear that a couple of
- 12 Commissioners can't stay all day is maybe what I
- interpreted you saying, concerns me that it's
- 14 another way of manipulating the public process.
- I think I have all the right to spend an
- 16 hour explaining some details of the Revised PMPD
- 17 that I, as a public --
- 18 CHAIRMAN KEESE: Why don't you start.
- 19 We haven't --
- MR. AJLOUNY: Okay.
- 21 CHAIRMAN KEESE: -- we haven't shortened
- 22 anybody yet.
- MR. AJLOUNY: Okay. Well, great. So
- 24 first, for clarification, Commissioner, you opened
- up by saying that you have about 15 witnesses.

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1 CHAIRMAN KEESE: It -- it seems to be
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- 2 shortening. We've --
- MR. AJLOUNY: That's fine.
- 4 CHAIRMAN KEESE: We've done quite well.
- 5 MR. AJLOUNY: I'm just keying in --
- 6 CHAIRMAN KEESE: I am going -- Ms. Cord
- 7 mistakenly believed that this hearing was starting
- 8 at 1:00, so we're going to save her for last.
- 9 Elizabeth Cord. So you may want to leave
- something for her to say.
- MR. AJLOUNY: No. Well, but I'm an
- 12 Intervenor, I'm not associated with Ms. Cord.
- 13 CHAIRMAN KEESE: All right. Go ahead.
- 14 MR. AJLOUNY: I wanted to key in on the
- 15 word "witness". And I've learned a lot about law
- 16 through this process, which has been a great --
- 17 great experience for me. So as a witness, did you
- 18 mean to use the word witness when you said you had
- 19 -- am I a witness today?
- 20 CHAIRMAN KEESE: Speakers.
- MR. AJLOUNY: Okay. So, because when I
- 22 hear witness, I --
- 23 CHAIRMAN KEESE: No.
- 24 MR. AJLOUNY: -- I think of being sworn
- 25 in and then --

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1
                   CHAIRMAN KEESE: No, we're -- we're
 2
         taking what you say --
                   MR. AJLOUNY: Okay.
 3
                   CHAIRMAN KEESE: -- as -- as truthful.
                   MR. AJLOUNY: Okay. But, again, to
         emphasize, it's not under oath, so the comments
         just made by the CEC Staff, I just want to --
         realize that it isn't taken under oath, it isn't
         part of the record, as long as what I'm saying is
         not part of the record.
10
11
                   CHAIRMAN KEESE: This is --
12
                   MR. AJLOUNY: Thank you.
13
                   CHAIRMAN KEESE: -- this is --
14
                   MR. AJLOUNY: All right. I just wanted
15
         to make sure --
                   CHAIRMAN KEESE: You're on the record.
16
17
                   MR. AJLOUNY: Okay. And Commissioner
         Keese, I just -- I'm feeling, as a public
18
19
         participant, that you haven't even made 50 percent
20
         of the hearings, and with all the controversy of
         this case and the -- this allegation of owning
21
22
         stock, I haven't had much time to spend in --
23
                   CHAIRMAN KEESE: Three -- three of the
```

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we have in front of us at this time is the

Commissioners here have not spent any time. What

24

25

```
1
         Presiding Member's Proposed Decision. That is the
 2
         document that has now been prepared. So that is
         what is in front of us. I am familiar with that
 3
         document, and I -- I trust my fellow
         Commissioners, who didn't participate in any of
         those earlier steps, are also. All five of us
         have in front of us that document. That's what
         this hearing is about. Matters other than that
 9
         are essentially irrelevant to this proceeding.
         You can speak to them, use your time on them if
10
         you wish, but the issue in front of us is, should
11
12
         this Commission vote to approve the Presiding
13
         Member's Proposed Decision.
14
                   MR. AJLOUNY: All due respect,
15
         Commissioner, you just interrupted me twice
         without letting me finish, and you're going off on
16
17
         a tangent that I'm not going -- I wasn't going
         there. The first was the key word, "witness".
18
```

The second point I just wanted to make, just for comment, I know it won't change, but I thought it would've been all fair for you to step down as Chairing this meeting, and choose one of your peers to -- to Chair the meeting. And just a comment, I know it won't change, but I feel strong about that.

19

20

21

22

23

24

25

```
1
                   I'll start off with page 280 of the
 2
         Revised PMPD. And also, I want to mention from
         the beginning, I'm available for questioning,
 3
         being very involved with this at every hearing, if
         any Commissioner would like to ask me specific
         questions, I'd love to -- the opportunity to
         respond.
                   Page 280, Items 26 and 27, on the -- I'm
 9
         talking about -- I want to focus in on some of the
         Findings and Conclusions. So, again, Items 26,
10
11
         27, and then also Item 34.
12
                   In Items 26 and 27. Item 26, Applicant
13
         has reached no agreement for the provision of
14
         water services to the Metcalf Energy Center by any
15
         identified water retailer. Applicant -- Number
         27, Applicant has not provided a firm commitment
16
17
         for its supply of recycled water. Keep those two
         thoughts in your mind.
18
19
                   Let's turn to Item 34. The City of San
20
         Jose is the administrating jurisdiction authority
         for the approval of sewer services and wastewater
21
22
         treatment for Metcalf, for the MEC. So my issue
23
         here, the first issue, is Item 34 is 100 percent
2.4
         true. I think we all know that. I think we can
```

25

all agree that they are in authority to determine

```
1 whether there's sewer or such.
```

2 Item 26 and 27, I think is worded in a 3 way to give someone the feeling that when you say there's no agreement, versus they have been flatly denied under the record, and I'm talking about the record, because I know I was directed to talk about the record in the Revised PMD. Under the record, it's in the record the City of San Jose, 9 along with the Mayor, 11 to zero, voted against the Metcalf Energy Center. So if you're going to 10 have Findings and Conclusions of 34 stating that 11 12 they have the authority, and we all know, in the 13 record it says they flatly denied it, I think it's -- it's -- Item 26 and 27 need to be worded that 14 15 Applicant has been flatly denied, 11 to zero, for water resources. And whatever. I'm just going 16 17 on, because I know I can talk, and my hour will be gone. But I think you've got my point there. 18 19 Now, in this proceeding I have many 20 Do you want to have conversation here now, more. or do you want me to continue? How would you like 21 22 to handle that, Commissioner? 23 CHAIRMAN KEESE: If a Commissioner has a 24 question on your testimony, and feels that they have a relevant question, they'll ask. 25

```
1
                   MR. AJLOUNY: Okay. Great. So I take
 2
         it if someone has a question, they'll let me know,
         and I'll just keep on proceeding here.
 3
                   CHAIRMAN KEESE: That's correct.
                   MR. AJLOUNY: So I -- I was -- asked,
         because I quess, maybe being part of this process
         for over two and a half years, I can see what
         happens, is at the end then people just vote and
 8
 9
         ignore things. So I'd ask the Commissioners to
         please take note. A lot of time has been spent on
10
         this, and I'm trying to just talk facts and not
11
12
         stand up here and whine.
13
                   Okay. Under noise. Noise has been one
14
         of my biggest concerns of this whole process.
15
         I want to first mention that in the errata of
         noise, it talks about adding the word -- the
16
17
         letters, dBa measurement, a sound measurement, and
         Le -- Leq in only one or two sentences in the
18
         whole Revised PMD, but yet the whole part of noise
19
20
         topic, it talks DNL, it doesn't talk dBa, space,
         DNL. Day/Night Averaging, I think it is.
21
22
                   So I don't -- I didn't understand that,
23
         so maybe there's -- there could be some
24
         clarification to that, of why that errata piece
```

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25

came out last week, and mentioned those two. Can

```
1
         you help me with that, Commissioner? Can anyone?
 2
                   CHAIRMAN KEESE: Staff care to answer
         that query?
 3
                  MR. AJLOUNY: So -- so I would hold --
         oh.
                   CHAIRMAN KEESE: Applicant's --
                   MR. AJLOUNY: Oh.
                   CHAIRMAN KEESE: Do you understand his
 9
         question?
                   MR. HARRIS: My understanding is that
10
         those two numbers are equivalent. They're just
11
12
         two different ways of measuring, DNL versus Leq.
13
         That's -- that's my understanding.
                   MR. AJLOUNY: And -- and my point is,
14
         through the whole noise topic, it uses the same
15
         words, DNL without the dBa in there, but for some
16
17
         reason the Commissioners came out with, you know,
         an errata. And it's kind of funny that the --
18
                   CHAIRMAN KEESE: I --
19
20
                   MR. AJLOUNY: -- Applicant comes out
        with --
21
22
                   CHAIRMAN KEESE: -- I would --
23
                   MR. AJLOUNY: -- the answer. I don't
```

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CHAIRMAN KEESE: There's -- there is an

understand the answer, so --

24

25

```
1 attempt through this process to arrive at a
```

- 2 document that can be implemented afterwards. And
- 3 one of the reasons for an errata is to clarify it
- 4 so that once -- should this power plant be
- 5 approved, should this document be approved, that
- 6 the parties will understand what it is. And if
- 7 that requires clarification of terms, that's
- 8 appropriate.
- 9 MR. AJLOUNY: I just ask that all of it
- 10 gets clarified.
- 11 COMMISSIONER LAURIE: Mr. Chairman, Mr.
- 12 Valkosky should answer that question. And I see
- -- oh, he is here. Okay.
- MR. AJLOUNY: Don't look at my notes.
- 15 (Laughter.)
- 16 CHIEF HEARING OFFICER VALKOSKY: Okay.
- 17 How's that?
- 18 The terms in question were added, to my
- 19 understanding, solely in -- for purposes of
- 20 technical consistency throughout the document
- 21 and --
- 22 COMMISSIONER MOORE: Are they equivalent
- 23 terms, Stan?
- 24 CHIEF HEARING OFFICER VALKOSKY: Leq and
- dBa are not equivalent terms. Where they were

```
1 inserted in the document is to make the terms, as
```

- 2 they were used at that point in the document,
- 3 consistent with the terms as they were used in
- 4 preceding points of the document.
- 5 In other words, it was just --
- 6 Commissioner Moore, the technical clarification.
- 7 When you're typing the things up, dBa got omitted
- 8 in one spot it should've been in. Leq got omitted
- 9 in one spot, it should've been there.
- 10 COMMISSIONER MOORE: dBa -- thank you.
- MR. AJLOUNY: Well, I'll just -- I'll
- 12 just make the point, and you can look at the
- 13 document later, I guess, if -- but throughout the
- 14 document, dBa is missing. Just like it was
- 15 missing at that one or two sentences. So I don't
- 16 understand. So I'll just ask, if you're going to
- 17 make the correction, make the correction
- 18 throughout the document.
- 19 It just made my ears, you know, my
- antennas go up, why just that one or two
- 21 sentences. When I read through the whole thing it
- 22 had just DNL without the dBa.
- 23 Okay.
- 24 COMMISSIONER PERNELL: Mr. Chairman, on
- 25 -- on that question, are you talking about

```
1 construction noise, or noise of the plant when
```

- 2 it's operating?
- 3 CHAIRMAN KEESE: I -- I believe --
- 4 basically, you're -- the explanation is that we
- 5 essentially made a typo, and --
- 6 MR. AJLOUNY: No, no --
- 7 CHAIRMAN KEESE: -- we had to --
- 8 COMMISSIONER PERNELL: To the noise
- 9 question.
- 10 MR. AJLOUNY: To my noise question, I
- 11 have most concerned, which I'll get into,
- 12 Commissioner Pernell, is the noise that the power
- 13 plant will be producing. But I just wanted to
- 14 make a clarification that the errata that came out
- 15 last week made a definite point of two sentences
- 16 that dropped the letters dBa. But throughout the
- 17 whole document of the noise topic, a lot of the
- 18 letters dBa are missing. So I just want to
- 19 clarify that, and, you know, if you're going to
- 20 correct it in one place, I just ask that it be
- 21 corrected at all places. Unless it was purposely
- done, again, maybe to manipulate. I don't know.
- Okay. I'm just making that point.
- 24 CHAIRMAN KEESE: Editorial
- 25 clarification. Thank you.

```
1
                   MR. AJLOUNY: Okay. So as I hear it,
 2
         maybe that when you vote today, it's going to be
         taking that -- dBa should be placed in all the
 3
         different locations. Maybe. Be a nice thing to
         -- to clarify before you vote.
                   Okav. There's been much discussion in
         the Revised PMD of where noise levels should be
         met, and the actual noise levels, starting on page
 9
         408. Throughout the whole document it talks about
         should noise level be at the fence line, the
10
11
         property line, the house, and so forth.
12
                   What I find incredible are the
13
         statements in the AFC. As I understand it, the
14
         AFC is the document the Applicant comes forward to
15
         be adequate before this process can even start.
         So that is not even part of the two and a half
16
17
         years. Before that, the AFC is presented.
                   Well, if you look at the AFC, on page
18
         8.5-1, and 8.5-7 -- I don't know if -- give me one
19
20
         second here. That's great. Oh, here it is. I
         put it in my noise document.
21
22
                   On page 8.5-1, stated from the
23
         Applicant, a controlling criterion is the CE
24
         significant increased criteria of 5 dBa.
         Acknowledging that it's 5 dBa, not that I agree
25
```

```
with that. In addition, San Jose has established
a long-term outdoor noise goal of 55 DNL, average
day and night noise level in decibels. And the
master development plan required that all property
lines, noise produced by onsite activities shall
```

6 not exceed 55 Leq eight hour peak.

2.4

The point I want to make is, through the testimony and through this Revised PMD and the comment period, there's argument of where the noise should be measured, that it shouldn't be at the property line. But I stand before you right now, and here's the document that the Applicant put in, saying they acknowledge it was the property line. So these are the kind of things that the public had to argue when -- when the Applicant talked about it's supposed to be at the property line, and also acknowledged it was supposed to be 55 DNL at the property line.

And now the argument is it's supposed to be 70 DNL. I think it's just incredible. I mean, this wasn't very hard for me to find. It's too bad that I've been, you know, so busy trying to keep a -- a family going that I didn't have enough time to find this sooner, because it would've been nice to bring this up earlier.

```
And also, on page -- as I stated, 8.5-7,

of the AFC, the document that started this whole

process, also acknowledging the City of San Jose

has established a long term noise goal of 55 DNL

and a short term guideline of 60 DNL. The -- the

North Coyote Valley Master Development Plan

establishes 55 Leq eight hour peak as its exterior

noise limit at the property line.
```

9 Put -- I'm just mentioning this again
10 because if the Applicant chooses to say it was a
11 misprint, or -- you know, they put the -- wrong in
12 a different place, you know, put the numbers down
13 wrong, here's another place -- and it's in two or
14 three other places. I don't want to spend my time

15

16

17

18

19

20

21

22

23

on that now.

But I do want to bring it to another area, at 8.5-6, which was a survey the Applicant did, which, again, is incredible. My kids did the math for me, just to verify. Basically, you take all the -- all the noise level surveys, and you average it. So you add the nine samples between 10:00 o'clock and 7:00 in the morning, and then you divide by nine. Simple math.

The Applicant puts in their AFC as a 46 dBa average level from 10:00 to 7:00. But yet,

```
when you add the numbers that they provided in the AFC, in the PSA, in the FSA, it averages to 41 and a half and 42 and a half.
```

Again, my feeling, and I've put it in great detail if you have the time to read it, is I think this whole process has been manipulated in the noise area, and it came to light, to me, is when the Applicant sat before Commissioner Laurie and the representative for Commissioner Keese, and the comment section of the Revised PMD, when they said honestly, Commissioner — these are paraphrase, Issa's words, I don't have the — the transcripts before me. Honestly, Commissioner, we have to be honest. If we're asked to keep a 44 dBa at the property M-1, which is the Passantino family, we will not be able to build this plant because we don't have enough land.

Oh, well, corporations make mistakes, don't they. We don't have to suffer as a neighborhood because they made a mistake. This is incredible that we just found this out today. Or that day. But yet, under testimony under oath, and in -- in the documents, stating with the -- with the Staff, and I don't mean to be smashing the Staff because some of the Staff I found to be

```
1 -- upheld as much as they could what they wanted
```

- 2 to do.
- 3 But the Staff said they agreed with the
- 4 Applicant to -- gee, I -- I lost my memory here.
- 5 One second. You can understand, as the public
- 6 here, it gets kind of tough trying to have this in
- 7 your head, be before a formal group like yourself.
- 8 So I'm -- I'm trying to present well, and I'm
- 9 getting a little uptight. I'm just going to take
- 10 a few seconds, just get my thoughts together, if
- 11 you don't mind.
- 12 CHAIRMAN KEESE: Okay.
- 13 (Pause.)
- 14 MR. AJLOUNY: Okay, thank you. Happens
- 15 every once in awhile. It probably has a name for
- 16 it.
- 17 But I was on the target. If you -- if
- you guys can remind me what I just said a few
- 19 seconds -- you know, minutes ago, it would help
- 20 me.
- 21 CHAIRMAN KEESE: It was noise.
- MR. AJLOUNY: But basically, I was
- 23 talking about --
- 24 CHAIRMAN KEESE: You were talking about
- 25 noise at the --

```
1
                   COMMISSIONER MOORE: Property line.
 2
                   CHAIRMAN KEESE: -- property line.
                   MR. AJLOUNY: Yes. I was talking about
 3
         the $5 million. I was going there, and I forgot
         where I was going.
                   But the Applicant put it in writing, and
         talked about, they didn't choose to spend $5
         million to make the plant quieter for the
 9
         neighborhood and for the trails right next to the
         power plant, and for the park across the street.
10
         And, you know, so forth. But they chose to give
11
12
         the Passantino family, who's receiving millions of
13
         dollars, I would imagine, for the ten flat acres
         that Calpine needed to built this power plant. I
14
15
         heard the rumor 10 million, but I can't say I can
         verify that. But I'm sure it's into the millions.
16
17
         That they would rather give them air conditioning
         and insulation and new windows to make the power
18
         plant quieter for them, keep them in their home.
19
20
         You know. Which is -- I can't understand it.
                   But it's amazing that they say that,
21
22
         that they can do it, but it costs $5 million. But
23
         then after the Commissioners, which I feel did one
24
         great thing, Commissioner Laurie and Keese, I -- I
```

grant you respect in that one area, is that you

25

```
1
         held what you felt was 44 dBa level to the
 2
         Passantino family, and that's what they should
         reach. That was all part of your decision in the
 3
         hearings, in the transcripts, and everything. But
         then, when the -- when we have a comment section,
 5
         that's not under oath, that the Applicant sits
         there and -- and Ken Abreu himself says well,
         Commissioners, really, we can't do it because if
 8
 9
         we're asked to do 44 dBa, we won't be able to
         build this power plant. And then the decision
10
         gets changed.
11
12
                   I would like to reopen this hearing in
13
         the area of noise and be able to cross examine,
14
         and -- and get it under oath, and see if they're
15
         willing go say you can't do 44 dBa. Not that it
         has any relevance, but if you're going to make a
16
17
         change from the PMD to the Revised PMD, I think
         you should do it according to the hearing, not a
18
         bunch of whining like we're -- or we're told as,
19
```

quote, NIMBYs, whining about this power plant.

We're talking facts here. And yet, some whining

from the -- from the Applicant gets taken as fact.

23 It's incredible.

24 I'll go on. Okay. On page 419 of the 25 Revised PMPD, okay. On Items 11 and 12, it says,

```
1
         the evidence shows it is technically feasible for
 2
         the project to comply with noise levels specified
         in the city ordinances, and thus eliminates any
 3
         non-compliance. Then what was added in the
         Revised PMPD is, comments on the PMPD, however,
         suggest otherwise. I mean, I think I just went
         through that scenario.
                   Item 12, the Conditions of Certification
         below are intended to ensure that the project's
         noise levels will measured at the Metcalf property
10
         line, and thus comply with applicable standards.
11
12
         And then they add -- I say they, you
13
         Commissioners, Commissioner Laurie and Keese -- to
14
         the extent technically feasible.
15
                   So Item 11 says they got to meet it, and
16
```

So Item 11 says they got to meet it, and then you give the Applicant a loophole, technically feasible, because all of a sudden, again, taking something that's just a comment in a comment hearing that isn't under oath.

Incredible.

17

18

19

20

21 And -- and also, if you look further 22 down, in the middle of the page, the last sentence 23 of the underlined, the words added, and will, to

the extent technically feasible, complying with city LORS. Again, I feel that something should be

```
1
         done between Items 11 and 12. Either say it needs
 2
         -- that it is technically feasible, like Item 11
         says, or say they're going to comply with 12 if
 3
         it's technically feasible. I think it's just
         double-talk. It gives -- it gives a weak -- a
         weak -- what are the words, a weak testimony or
         witness to the courts, maybe, or to anybody else.
         And when you see Conditions of Certification, the
 9
         way I understand it, these Findings and
         Conclusions are going to be documented. So it's
10
         pretty weak.
11
12
                   So I'd ask that the Commission make up
13
         their mind. Is it technically feasible; great,
14
         keep 11, get rid of 12, or get rid of the last
15
         part of 12, or vice-versa.
                   Any questions on that piece? Guess not.
16
17
         I'm going to get the silent treatment.
                   Noise, COC 5. I'll end with a -- on
18
19
         page 424. I think what -- what I have a major
20
```

page 424. I think what -- what I have a major
problem with is -- is on -- for Noise Condition 5,
of Certification, I can see I forgot to highlight
it. But it talks about -- it uses the word
approaching. In order to comply or approach. So
maybe it's on 424. And I apologize again. But in
the Conditions of Certification, the words are

```
saying the Applicant has to meet this -- this
level of sound, or approach it. And again,
another loophole.
```

If I'm at 100 dBa level of -- of a

source, and I do something to make it to 99, the

definition of approach means -- I think you can

all answer that truthfully, that I approach the 44

or the 49 dBa level. I think it's a loophole, I

think it needs to be stricken out. That the -
the Applicant should be held to keep it a noise

level, and make it very clear.

Being in the business more than I have, you've known, and even probably experienced in this case, once the Applicant gets the override, or gets the okay to build the power plant, then the changes come, which there's many changes.

Like the routing of the pipeline, and now they want -- which I'll get into.

So it's really important to when you do make your decision today, that you make it with clear, concise words. And I think the word approach is -- is unexcusable, inappropriate, and unprofessional.

I'll touch on visual, now. On VIS-10,
and I don't know what the page is, but in the

```
Condition of Certification, I'll do this from
 1
 2
         memory. But Calpine, through the whole process,
         Commissioners, if you can really listen to this
 3
         because this is, again, another amazing thing.
         Through the whole process promised the City of San
         Jose, was on the radio, was in the paper, it's on
         their Web site today if someone wants to go look,
         and maybe if you did take the time to read my --
 8
 9
         my comments, it's on their Web site. I checked
         last -- I just checked two days ago, on Saturday
10
         night, just to see if they took it off. It's
11
12
         still on the Web site, stating no plume from this
13
         plant because we're going to use the best
14
         technology abatement garbage, you know, rigmarole
15
         in this box under -- under hearings and cross
         examine -- they said we're not going to commit
16
17
         what we're going to put in that box. We'll just
         say we have a box and it's an abatement process,
18
         and it's going to eliminate the plume and there
19
20
         will be no plume.
                   And again, you have Curt -- Curt
21
22
         Hildebrand, who basically stated under oath, in
23
         front of the U.S. Senate, that there will be no
24
         plume, no vapor plume. That's incredible. But
         now, before the Commission, and we find out
25
```

```
afterwards, after they get the override and now
 1
 2
         the -- now the arms are twisting, and now, aha, we
         got the override, now let's come out with what we
 3
         really want. Let's another -- save another buck
         at the expense of my community, who, when I looked
         before, why are you whining, Mr. Ajlouny. Are you
         a NIMBY? You're not going to see it, because
         they're on the other side of the hill. But now,
 8
 9
         I'll see a smokestack, and I wonder what's going
         to be on the other side of that smokestack.
10
                   Is that really something you want to
11
12
         have when you're sitting in your backyard,
13
         enjoying your kids, and then looking over the
14
         fence and then you see this nice beautiful hill,
15
         then you see a smokestack? That's incredible.
                   Again, the Applicant for two and a half
16
17
         years told us no plume. It's -- it's on the Web
         site today, as far as I know, and it was under
18
         Senate Hearing, Curt Hildebrand, I understand to
19
20
         be the vice president of Calpine.
21
                   If I can get some water it would be
22
         helpful. I don't know who could maybe do that for
23
         me.
24
                   Okay. On alternatives, very sensitive
         topic. On page 463, and I -- I really, again, I'm
25
```

```
1
         going to ask the Commissioners to really pay
 2
         attention to this, because again, I think it -- it
         was just a, you know, one of those -- you know,
 3
         what do you -- I'm not good with words. It was
         basically done not purposely, so I'm just pointing
         it to your -- thank you very much. I appreciate
         it. Thank you.
                   On page 463 of the Revised PMPD, I think
 9
         a key word was left out, and I'm sure it was done
         by mistake. All's I ask is that -- it's really
10
         not -- it was basically replaced by a different
11
12
         word, and I'm sure it was a mistake, like I said.
13
         Second from the last paragraph, last sentence says
14
         -- well, let me just read the sentence. Staff
15
         concluded that alternate site three is large
         enough to accommodate the MEC project, and that
16
17
         sites three and four are otherwise the
         environmentally preferable sites. Is that -- did
18
         everyone see that? You know where I'm at?
19
20
                   I guess I'm not going to even get a nod,
         huh. Okay. Well, on that page, it references
21
22
         testimony on 3/13, pages 315 and 316. I have it
23
         on my laptop, the transcripts, and when I read the
24
         transcripts, it was very clear that the Staff's
```

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25

witness said environmentally superior. Made it

```
1
         very clear. And the point I want to make, too,
 2
         through this, it was only made clear because it
         was in the PSA as environmentally superior, but in
 3
         the FSA it was taken out. And under those same
         pages, Staff's witness stated that it was taken
         out because his management told them they wanted
         it out. And his lawyers. I think that's
         incredible that -- that's a key thing for CEQA
 8
 9
         law, to say that -- you're saying that one hand
         it's environmentally superior, these other
10
         alternate sites, in the PSA, and in the FSA it's
11
12
         taken out, and then when you're questioned under
13
         oath, the truth comes out that it was taken out
14
         because he was told by his management to take it
15
         out.
                   I'm not making this up. It's all in the
16
17
         transcripts, the testimony of the hearings. I
         can't mess with that.
18
                   So I'd just ask that that word,
19
20
         "preferable", be replaced with what was truly the
         testimony, of saying environmentally superior.
21
22
                   Thank you.
23
                   On page 464, the first sentence -- well,
24
         it carries down to the next sentence, and I'll
```

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just start off from the top. This location would

```
views from the nearby residents, as well as to
users of a segment of the proposed Bay Trail.

They're talking about alternate site three, that

that's an issue, that, you know, some people at
```

result in a direct and significant impact to the

- 5 -- that's an issue, that, you know, some people a
- 6 the Bay Trail, it's a significant impact to them
- 7 because they have a trail in alternate three. But
- 8 yet, the trail that is existing, not one that's
- 9 going to be happening in the future, existing
- 10 trail, there today, there's no mention that that's
- 11 a significant impact to that.

1

- 12 And then a future trail that's going to
- 13 be -- I think someone said, in the hearings, at
- one point, 15 feet away from the power plant, the
- 15 proposed trail that the City of San Jose and the
- 16 county has in the plan, and I forget the name of
- 17 the trail. Do you guys remember? But either way,
- 18 I think it's incredible that MEC has an existing
- 19 trail, and it's not considered a significant
- impact, but yet the proposed trail, Bay Trail,
- 21 that's at alternate site three, proposed site, is
- 22 a significant impact.
- 23 Pointing out some of the areas -- I
- 24 mean, I could go on and on, and I'm not going to.
- But pointing out how this Revised PMD is flawed.

```
1
         And you -- you five Commissioners are asked to
 2
         vote on this document, and I really just want to
         point out, you know, what's the hurry. I mean, I
 3
         don't think we all -- I don't think we can -- I
         think we can all agree that we had zero blackouts
         this summer. Some will say oh, it's the good
         weather. Oh, well, I -- I'd say maybe good
         weather, the good Lord, whatever. The bottom line
 9
         is there was no power outages. Bottom line is,
         you know that there's been four power plants, I
10
         think, to this date, that's come online, since
11
12
         this hearing has been closed.
13
                   So there's no hurry. So, if anything,
         please postpone this thing and -- and look at the
14
15
         details. Maybe have a hearing so we can all speak
         with the five Commissioners there, and hear the
16
17
         truth. Under oath.
                   On page 469, item six. It's amazing.
18
         You can put -- you can put Findings and
19
20
         Conclusions in at your choosing, when, you know,
```

You can put -- you can put Findings and
Conclusions in at your choosing, when, you know,
when it benefits the Applicant, maybe when it
benefits the decision. But I, again, I'm trying
to point out some -- some minor few things that I
-- or significant things that I found out, but I
know there's many more.

```
1
                   Item six, use of alternative sites three
 2
         or four would not conform with applicable
         development standards regarding height
 3
         restrictions. Incredible. Metcalf also does not
         conform to the height restrictions. Why put it in
         there that three and four doesn't, you know,
         doesn't conform, and not mention Metcalf? So I'm
         asking that the words be added so the truth will
 9
         be known for the future record, acknowledging the
         proposed site also does not conform. Just adding
10
         that statement on item six. It's only fair. You
11
12
         want the truth, you want your -- your document to
13
         be strong, so when you make your decision today
14
         you make it accordingly, and you make a well and
15
         wise decision. I'm just asking for that
         correction.
16
17
                   Item 14. This is -- I guess I chuckle
         every once in awhile at this stuff, because I -- I
18
         was one of the ones cross examining. It says use
19
20
         of an alternative site would not meet the proposed
         project's objective of being online in the near
21
22
         future. Amazing. I brought out alternatives one
23
         and two and three and four, and how -- argument
```

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Metcalf would be online.

was it wouldn't be online in time for -- as

2.4

```
1
                   Well, the truth is today, and I think I
 2
         have an e-mail from your -- from your Staff
         stating the truth, so again, if you want it, you
 3
         can see it. But this is from -- this is from
         Robert Ruel. I asked him the question. Bob,
         could you tell me what the status of Los Esteros
         is, and if you think it will be data adequate on
         September 25th, which is tomorrow? But the Los
 9
         Esteros is alternate sites one and two that the
         Applicant argued wouldn't be online, and you can't
10
         assume, and it's all assumption and hearsay, and
11
12
         all these big words that I learned in the
13
         courtroom kind of proceedings.
14
                   Response from Robert Ruel. Issa, the
15
         Los Esteros project, 01-AFC-12, a four month
         application, will be recommended as DA -- I assume
16
17
         DA means data adequate -- at the September 25th,
         2001, CEC Business meeting. You had asked about
18
         significant issues. The City of San Jose is
19
20
         processing a revised plan development zone change
21
         that covers this project site.
22
                   Wow, it's amazing. The City of San Jose
23
         behind this one, and how quickly things go. But
```

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when they're against it, which they have a legal

right to be, I -- I think it's just amazing that

24

```
1
         an applicant still would go forward with something
 2
         as -- someone at the City of San Jose that doesn't
         want it. Previously, the U.S. Dataport project
 3
         had called for a large battery for diesel
         generation to provide power. This project is
         designed to answer the city and the CEC concerns
         regarding that proposal.
                   So I know it's not part of the
         transcripts, it's not part of the hearing. But
         it's significant. It's black and white. You all
10
         know that Los Esteros is going to be data
11
12
         adequate, probably tomorrow. I know it's not 100
13
         percent, but again, in the testimony and
         transcripts, it was stated that we don't know
14
15
         what's going to happen. Metcalf would probably
         come on a lot sooner than Los Esteros.
16
17
                   Well, now, for the record, it looks like
```

it's a six month process, it's going to be data 18 19 adequate tomorrow. You got the City of San Jose 20 backing it, changing zoning like that, you know, helping the applicant -- by the way, which is 21 22 Calpine, as I understand it, right? No comment. 23 You're not looking happy there, Jeff. Anyways --24 and it's going to be in before Metcalf. Significant. 25

```
1
                   So I would -- I know it's not, again,
 2
         part of the evidentiary record, but Item 14, I
         consider -- I'd consider striking that, or
 3
         something. But do something with it. Don't be
         blatantly obviously to the point of just okaying
         this whole document, as is.
                   Item 15. The MEC is the only project
         identified and reasonably likely to be online in
 9
         the near term future which will provide 600
         megawatts of local generation and attendant
10
         electrical system benefits. I understand that's
11
12
         not part of the testimony, but it's common
13
         knowledge many power plants are coming online
         before Metcalf, adding over 600 megawatts. I know
14
15
         it's -- I know it's not one large 600 megawatt,
         but I just wanted to point it out for you guys to
16
17
         discuss, I guess, at a later time.
                   Page -- wait a minute. Okay, I missed
18
         something. Condition of Certification for visual.
19
20
         I want to go back to visual for one second.
         Condition of Certification for visual talked about
21
22
         -- when I talked about the visual plume, I forgot
23
         to mention a key thing. Again, the Applicant said
24
         no plume, no plume. Now they wanted to
```

25

have a plume at nighttime, or when there's rain or

```
1 when there's fog.
```

25

```
2
                   The -- all through the transcript, it
         talked about 30 degrees Fahrenheit, and 90 percent
 3
         humidity. And all -- then, you know, you talk
         about this and you discuss what -- what 30 degrees
 5
         Fahrenheit and 90 degrees humidity is, and you
         make this box to say if anything, if the
         temperature's 30 or above, or 90 percent below,
 9
         you will not have a plume. And then, you know,
         discuss that in detail. And, by the way, the
10
         Staff said they'd prefer a 20 percent -- I mean, a
11
12
         20 degrees Fahrenheit temperature, and a hundred
13
         percent humidity. It's all in -- in the
14
         transcripts.
15
                   But yet, when -- when the COC comes out,
         it says hey, we want a plume at nighttime, rain,
16
17
         and fog. It's like what does that have to do with
         anything. Stick to what the -- what the
18
         transcripts say and what the testimony is. Give
19
20
         the Condition of Certification and put it in
         there. You make that box, 30 percent Fahrenheit,
21
22
         or 20 percent, or why don't you compromise, 25. I
23
         mean, 25 degrees Fahrenheit, and -- instead of 90
24
         or 195 percent humidity, make the Condition of
```

Certification that it meets those specs. It's

```
1 very, very important. Don't just come out with it
```

- 2 can be at nighttime, rainy days, or -- or foggy
- 3 days.
- 4 Page 471, for override. Second
- 5 paragraph. Well, really, the whole override
- 6 thing. You guys know it, there's two kinds of
- 7 overrides, and all that. Bob did a good job of
- 8 explaining it, not that I felt that a lot of it
- 9 was true. But on page 471, second paragraph.
- 10 Second, in the case of a power plant licensing
- 11 application, law provides for another type of
- 12 override. This is the second type of override
- we're talking about.
- 14 In this instance, where the Commission
- 15 considers the licensing of a project that does not
- 16 conform to state or local LORS, ordinances,
- 17 regulations, standards, the Commission cannot
- 18 license the project unless it finds or determines
- 19 that such facility is required for public
- 20 convenience and necessity, and that there are not
- 21 more prudent and feasible means of achieving such
- 22 public convenience and necessity.
- 23 It says, above -- the next sentence.
- 24 This determination must be made based on the
- 25 totality of the evidence of record, and consider

14

15

16

17

18

19

20

21

22

23

2.4

25

```
environmental impacts, consumer benefits, and electrical system reliability.
```

I just -- again, I know it's not part of 3 the hearing evidence of record, but for this Commission to just disregard, because six months ago the record was closed and it took us six months later to actually have this day before you, highly irresponsible to not take notice of the actual performance of the State of California, as far as the great performance of the community, all 10 the public. I think it's down to bringing --11 12 coming down 12 percent as far as the usage of 13 power. That's incredible.

Your own agency last Friday released how good we're doing as far as power generation in the State of California. To not take notice of that is incredible. But again, I understand that that statement is true, maybe, on 471. And I say maybe. But it's a common knowledge, like some common knowledge we know in America that happened weeks ago. It's common knowledge that this State of California has not lost any power in the summer, when they predicted 34 power outages from the last four months, including this one. And we're just about done with this one. One more

1 week. Maybe Calpine can come up with something in

- 2 the next week, to have something happen. Who
- 3 knows.
- 4 CEC's own study release -- should that
- 5 -- I got just a few more things. And I would've
- 6 been much -- I was -- I was going to have a power
- 7 point presentation and put many more hours into
- 8 this, but because I was denied my hour I didn't,
- 9 so if you think I'm kind of scatterbrained or not
- 10 with the correct words, it's -- it's only because
- I -- I asked for an hour, and hopefully would've
- gotten some notice by that. And I would've been
- able to do a better job.
- I want to get into air credits. I'm not
- 15 going to reference any page. I think everyone
- 16 kind of knows it. But throughout the hearings,
- 17 throughout the testimony, throughout the record,
- 18 Calpine is arguing no oxidation catalyst. Now,
- 19 there's different words for that, but I -- that's
- what I know, is oxidation catalyst.
- 21 We don't want an oxidation catalyst,
- their witness, Rubenstein, Mr. Rubenstein, said.
- 23 It would add one and a half to two pounds of PM10
- 24 per hour per turbine, which comes out to 16.7 tons
- a year more of PM10. Throughout the hearing.

```
1
         Again, Commissioner Laurie, Commissioner Keese,
 2
         thank you very much for coming out with the
         oxidation catalyst to try to protect us, as a
 3
         neighborhood. But I think it's incredible,
 5
         incredible, that of the hearing under the
         transcripts, under oath, Calpine is screaming,
         16.7 more tons of PM10, we can't have an oxidation
         catalyst, and now that there is one, the
 9
         Commission is saying okay. Well, after you build
         it, if there's more PM10, then you buy credits.
10
                   I don't know of any power plant that you
11
12
         license in the State of California, that you have
13
         them buy credits after they build the power plant.
         I think they should be held to their testimony,
14
15
         as, again, Staff has agreed. Now, I know there's
         some political pressure to kind of quash that, but
16
17
         Staff, in the comments -- said they should be held
         to pay the 16.7 PM10 credits. And if they don't
18
         put out the PM10, the 16.7, good for the
19
20
         neighborhood, but at least they bought the credits
         to get it out somewhere.
21
22
                   Maybe that might benefit the
23
         neighborhood, because I totally don't believe in
24
         this bank of buying credits in San Francisco is
         going to help my neighborhood, who witnesses have
25
```

```
said it's the worst place to put a power plant,
```

- 2 five meteorologists that are experts, because of
- 3 the valley and how the inversion layer's going to
- 4 keep the -- the air pollutions within those
- 5 mountains.
- 6 So I -- I ask that the Conditions of
- 7 Certification, that you add the mitigation for the
- 8 16.7 additional tons of PM10.
- 9 Under, on page 25, this is from memory,
- of the FSA, it states, from Ms. Kerry Willis,
- 11 here, nice lady, talking about need conformance.
- 12 Not being done because of the new law, January, I
- think, of 2000, that the need conformance doesn't
- 14 have to be done because, Issa's words, power plant
- 15 companies are going to do it on their own. If
- 16 they lose money, it's their problem. We just want
- 17 to put a bunch of power plants, and create
- 18 competition, and then, you know, hopefully power
- 19 prices will come down.
- 20 Well, with an override, you know, you
- 21 need to have a need assessment done. Your own --
- I think it's Resources Board here, I mean, I can't
- 23 bring it out, but, you know, if you want the
- truth, why don't you ask the people in the
- Resources Board, in your own agency, come under

```
oath, and ask if they were ever asked to testify
 1
 2
         in these hearings about if there's a need of this
 3
         power plant. And their answer was, the head --
         the head person there, answers -- answer was, no,
         because Metcalf is not needed. The ISO stated,
         under oath. I said, where would you want this
         power plant to be, if there wasn't the time
         consideration, out of the five, the alternates
 8
 9
         one, two, three and four, and Metcalf Energy
         Center. Where would you want this power plant.
10
         This is the ISO, not Issa. His answer was, one,
11
12
         two, three or four, before Metcalf, because it's
13
         better for the grid.
14
                   It's amazing that, again, that all of a
15
         sudden, Metcalf is -- has to go in, has to go in
         now, and -- and the judgment has to be done today.
16
17
         When the ISO, under -- under oath, stated that
         Metcalf was the worst place out of alternatives
18
         one, two, three and four. But yet, no one sees
19
```

I'm going to touch on a sore subject,

but I have to say it for the record. I was

contacted by Karen -- I don't know her last name,

that alternates one, two, three and four are

environmentally superior except a Staff member of

20

21

22

the CEC.

1 starts with a "S", that did the -- wrote the PEER

- 2 letter. I was -- Schambach. I was contacted by
- 3 her. I did leave a message, because I was in one
- 4 of these hearings when you guys were talking about
- 5 doing the new hearing rules, and she came out of
- 6 the blue and says I'm in the middle of an
- 7 investigation, and I'm concerned that Intervenors
- 8 aren't being able to participate, and all this
- 9 kind of stuff.
- 10 So I left a message, and she contacted
- 11 me back, so we've talked a number of times. And
- she told me she couldn't talk to me about details,
- 13 and she really wouldn't tell me much, and that
- 14 she's doing an investigation, and that's all she
- 15 would tell me. But I was pleasantly surprised
- 16 that she was able to penetrate some of the Staff
- 17 members, because I personally was, too, for the
- last two years. And I've had some of the Staff
- 19 call me with great concern of the political
- 20 pressure and what has happened, from -- from the
- 21 noise witness, who basically was pushed aside from
- 22 -- between the PSA announcement to the FSA, and
- 23 the only thing different between the PSA and the
- 24 FSA was three paragraphs. And one of them was we
- 25 agree with the Applicant.

```
I personally know Kisabuli did not agree
 1
 2
         with the Applicant on a conference call, to quiet
         the home. He said you need to quiet the power
 3
         plant. So all of a sudden he's pushed off. You
         -- this Commission right here, the CEC Staff, paid
         thousands for this Alan Rosen, I think his name
         is, consultant, paid thousands of dollars to have
         him be the witness for noise for Metcalf, to
 8
 9
         basically cut and paste the PSA and add three
         paragraphs. And one of them is significant,
10
         saying we agree with the Applicant. Incredible
11
12
         stuff. Again, not hearsay, all documented.
13
                   So I -- I really want to urge you to
14
         take seriously this investigation by PEER, because
         the way I understand it by talking to Karen, she
15
         says that she cannot tell people who she talked
16
17
         to, or will never divulge any of that kind of
         information, and she needs to make sure that the
18
         Staff felt comfortable to talk to her. So by
19
         doing that, she was able to get people to call her
20
         and talk to her, and basically give her opinion.
21
22
         And that -- that three-page report is just
23
         amazing. And it basically says there was some
24
         political pressure on this whole power plant.
         Metcalf, now, not all power plants, specifically
25
```

```
1 said Metcalf had political pressure on the -- on
```

- 2 the FSA, which the Commissioner -- Commissioners
- 3 did their whole foundation on. Incredible.
- I think, please, Commissioners, take
- 5 note of that. Don't rush into a decision today.
- 6 Take time to take someone like Karen and -- and
- 7 open up the -- the hearings, and ask her
- 8 questions. There's no hurry for this power plant.
- 9 We all know that we're not in a dire need. Your
- 10 own Staff came out last week and said that.
- I can ramble on. I thank you for the
- 12 time, and I really would appreciate asking me
- 13 questions. Maybe it makes me feel better as a
- 14 person that you guys actually listen.
- 15 Thank you very much for your time.
- 16 CHAIRMAN KEESE: Thank you, Issa. Thank
- 17 you.
- 18 I'm going to divert from the order I had
- 19 mentioned earlier, and Mr. Kreamer, are you on the
- 20 line?
- MR. KREAMER: Yes, I am.
- 22 CHAIRMAN KEESE: I'm not hearing you too
- clearly, so we -- we hope you can speak up, and
- 24 we'll -- I'll let you know whether we can hear
- you. But this is your time.

```
1
                   MR. KREAMER: All right. Thank you very
 2
         much for this opportunity to take part to what
         extent I can, although it's somewhat limited, with
 3
         my disabilities, of being able to take and can see
         who is speaking. And also, for me to evaluate
         them and for they to evaluate me, and my body
         language, things like that, as well as not having
         access -- access to the written documents that you
 9
         mentioned, and did not read into the record, for
         reasons which I can understand, but these are all
10
         problems that come up with this type of telephone
11
12
         testimony.
13
                   This morning, when I was picked up by
         Paratransit, I attempted again to show the -- the
14
15
         sight from my driveway of the power plant, which
         is only a very few miles to the west. Again,
16
17
         although sometimes it's so clear it looks like one
         could throw a rock and hit it, it was shrouded and
18
19
         overcast. This is not uncommon whatsoever. I
20
         cannot believe that the nature of the
21
```

- meteorological conditions were properly evaluated.
- 22 Nor have I run across anything regarding the Santa
- 23 Teresa Kaiser Hospital, which is immediately to
- the north and looks similarly close. 24
- I did talk to the -- Carol Hanigan, 25

```
1
         assistant, who is the head of that hospital, and
 2
         it seemed like my communications with them was the
         first they knew. I have been at that hospital to
 3
         take and visit a friend, and another friend who
         had a recent severe asthma attack, and was
         hospitalized at that hospital. Perhaps your
         assessments of who would be impacted by the level
         of plumes doesn't take into consideration the fact
 9
         that the newborns and people with severe health
         problems are being impacted at a greater extent
10
11
         than what could be expected of the normal
         population.
12
13
                   Also, I still do own property interests,
14
         and a piece of property immediately to the north
15
         of the -- of the PG&E towers, and the noise impact
         would be a consideration for the value of that
16
17
         property. So I do take note of -- of your normal
         parameters of looking to the noise level at the
18
19
         site.
20
                   Truth has been brought up. If truth was
21
         one of the factors in this proposed power plant, I
22
```

one of the factors in this proposed power plant, I can't believe that the -- truthfully, the

Applicant could've obtained the property that he did through the use of the Santa Clara County courts, for the largest construction project ever

23

24

```
1
         in Silicon Valley, some of the most expensive real
 2
         estate in the world, at 10,300 an acre. That
         seems improbable to me. I refer to the book by
 3
         Romadi Bachtra, The Crash of the Millennium, he's
         from Southern Texas University, who goes back and
         shows that -- cultures collapse as they are
         perverted by people of great wealth, and therefore
         disproportionate power to impact upon the legal
         processes to obtain land.
                   In fact, one of the terrorists that flew
10
11
         into the World Trade Center, his father couldn't
12
         believe he'd do something like that because he
13
         cared so much for other people. In fact, he was
14
         very, very upset with that the fat cats would take
15
         away the properties and homes of others.
                   Thank you very much for my ability to
16
17
         speak.
```

18 CHAIRMAN KEESE: Thank you, Mr. Kreamer.

19 Appreciate your -- your comments.

20 MR. KREAMER: I would just have one 21 addendum, that we rely upon a lawful process. 22 Unfortunately, that process can be used for

23 tyranny. The answer to tyranny, if there is not a

lawful process, is anarchy. And we saw that on --

25 on the 11th.

1	Thank you very much.
2	CHAIRMAN KEESE: Thank you.
3	Mr. Volker. Stephan Volker, on behalf
4	of the Santa Teresa Citizens Action Group.
5	MR. VOLKER: Thank you.
6	Good morning, Honorable Commission.
7	It's an honor and a privilege to be before you
8	today. I would like to address my comments
9	primarily to the issue whether this Commission
10	should reopen its evidentiary hearing to take
11	evidence under oath, and to provide for cross
12	examination of the witnesses who would provide
13	that evidence, documenting the substantial
14	improvement in the statewide energy supply demand
15	context during the last six months.
16	As we indicated in our September 7
17	comments, which were based on an authoritative
18	review by a noted economist, the context has
19	changed. Projections of demand have gone down.
20	Projections of supply have gone up.
21	Let me summarize the new information
22	that this Commission should take into account.
23	This Commission, I should note, has an opportunity
24	now to take this information into account because

25

the licensing schedule for the MEC project has

1	been delayed substantially because the Bay Area
2	Air Quality Management District Hearings Board has
3	scheduled additional hearings on the permits that
4	it would issue for the project. On October 15, it
5	will hold a pre-hearing conference, in
6	anticipation that further merits hearings on those
7	permits would be held in November and December.
8	So we have ample opportunity for this
9	Commission to re-notice the evidentiary hearing in
10	this case to make very sure this Commission has
11	the most correct information from its Staff, from
12	the Applicant, from the public, before it weighs
13	the critical issues posed in this proceeding.
14	On page 88 of the Revised PMPD, the
15	Proposed Decision states that the projected
16	forecast for the greater Bay Area of anticipated
17	demand was 10,000 megawatts for the year 2002. Or
18	August 17 of this year, the Independent System
19	Operator, in a staff report, updated that
20	information, concluding that the load forecast in
21	the Bay Area would go down from 9,500 megawatts to
22	only 9,000 megawatts in that same year, 2002.
23	That represents a ten percent decrease in
24	anticipated demand in the Bay Area.
25	On August 27 of this year, the

```
Independent System Operator issued a report for
the Silicon Valley Power Utility, which is owned
by the City of Santa Clara, indicating that in the
year 2001, actual peak loads were less than 450
megawatts, far less than had been forecast for
that year in PG&E's year 2000 annual transmission
expansion plan. So at the same time that demand
is contracting in the greater Bay Area, it is also
contracting in Santa Clara County.
```

At page 91 of the Revised Proposed

Member's -- excuse me, Presiding Member's Proposed

Decision, that document states that this project

would relieve the potential for overloads of

transmission lines serving the local area. It

ignores testimony by the Independent System

Operator that this project would exacerbate

loadings at the Metcalf Substation transformer.

We now have information, as reported on page 22 of our September 7 comments, that the MEC project would reduce the load-serving capacity of the 115 kilovolt grid between PG&E and Newark, reduce it from 1,886 megawatts to 1,838 megawatts, as reported by the ISO in that same August 27, 2001 report. This is significant, because if you look at actual loads last year, in the year 2000,

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on this grid they reached 1,870 megawatts. The

conclusion is, if this project had been operating

in June of last year, when loads reached that high

point, it would've caused an overload on the San

Jose area transmission grid.
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The Commission's load system effects analysis assumes that PG&E's proposed Northeast San Jose Transmission Project would be online prior to the operation of this MEC plant. That project includes a 230 and 115 kilovolt substation at Los Esteros. The CPUC has proposed suspension of that project just recently, because the estimated costs for that project have doubled. If we took that new evidence into account, we would find that this project would cause overloads in the local transmission network because the Los Esteros Substation would not be online.

At page 456 of the Revised PMPD, that document states that the purposes of this project could not be met through a combination of alternative sources of energy, such as peaker plants and generation at Gilroy, but does not address the specific projects that it rejects as inadequate. Since the close of the evidentiary hearing in this proceeding in March, we now have

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1 evidence in the form of license amendments that
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- 2 have been proposed, and applications for
- 3 facilities that have been submitted to this
- 4 Commission, that document 768 megawatts of local
- 5 capacity that would be available by the summer of
- 6 2003, prior to operation of the MEC facility.
- 7 They include 135 megawatts of generation
- 8 expected to be licensed at Gilroy -- excuse me.
- 9 It's already under construction. That has a
- 10 schedule now that would bring it online prior to
- 11 2003. There's a second generation facility at
- 12 Gilroy, of the same output, 135 megawatts, that's
- 13 now pending before this Commission. In addition,
- there is a 180 megawatt facility, the U.S.
- Dataport facility, part of the Los Esteros
- 16 Critical Energy Facility license application that
- has been submitted to this Commission, and there
- is a proposal to increase that capacity from 180
- 19 to 250 megawatts by 2002.
- 20 In addition, we have the Spartan 1 and
- 21 Spartan 2 projects in San Jose. Spartan 1,
- 22 anticipated to generate 96 megawatts, and Spartan
- 23 2, at least 124 megawatts, per this Commission's
- 24 Staff report, or 200 megawatts as assessed by the
- 25 ISO. Spartan 2 facility would be nearby, in

Milpitas. The Spartan 1 project also has been proposed to be increased from 96 to 124 megawatts

3 in 2002.

The upshot is that since the close of
the hearing in this case, we have learned that
almost 500 megawatts of near-term combined cycle
capacity would be available in the local area
before this project could come online, including
the Spartan 1 and 2 projects and the Los Esteros
project. In addition, we expect 270 megawatts in
the Gilroy 1 and 2 projects of single cycle
capacity to come online before this project would
come online.

The capacity of the projects I've just enumerated is 546 megawatts, which is comparable to the 580 megawatts proposed in this project. In addition, as I've explained, another 222 megawatts are anticipated in applications to be received and amendments to licenses to be proposed in the next few months in the San Jose area.

Now, this change in context makes a very substantial difference because the Revised PMPD comes to just the opposite conclusion. At page 469 it states, and I quote, "MEC is the only project identified and reasonably likely to be

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online in the near term future which will provide
megawatts of local area generation and
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3 attendant electrical benefits."

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necessity.

That statement is not correct. And that
statement lies at the heart of the balancing that
this Commission must conduct in order to provide
the public with a fair and lawful decision.

The assumptions underlying that 9 conclusion also appear in the override findings in the Revised PMPD, which appear at page 475, where 10 this Commission concludes that this particular 11 12 facility is required for public convenience and 13 necessity. But, in fact, because of falling 14 demand, growing supply, and, moreover, certainty 15 that local supply equivalent to this project will be online before this project would come online, 16 17 we know that this project is not necessary. It's not required for the public convenience and 18

This Commission's Staff released a report on August 22 of this year, its draft California Energy Outlook, Electricity and Natural Gas Trends report. That report concludes that in the year 2003, this state will be well on the way to an energy glut, rather than shortage. In

1 particular, it projects that in California we will

- 2 have a capacity, a peak load capacity equivalent
- 3 to a one day in ten year weather condition, plus a
- 4 seven percent operating reserve, plus 7,000
- 5 megawatts to spare.
- 6 Furthermore, that report recounts that
- 7 energy generating facilities out of state, but
- 8 within the southwest, proposed by companies whom
- 9 we expect to sell energy to California, will
- generate an additional 7,000 megawatts, in excess
- of anticipated load growth in the southwest. Most
- of those facilities are already operational or
- under construction.
- 14 So far from the gloomy, the grim picture
- 15 painted in the Revised PMPD, if this Commission
- 16 had the benefit of the substantial change in the
- 17 energy demand and supply context which we have
- 18 experienced in the last six months, this
- 19 Commission would have to find that this facility
- is not required for the public convenience and
- 21 necessity, that California has other alternatives
- 22 available to it that would have far less
- 23 environmental impact than this proposal. So times
- have changed. It's important this Commission's
- 25 analysis and conclusions reflect those substantial

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1 changes and effects.
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2
                   In addition, we find that overall,
 3
         according to the Independent System Operator, this
         last six month development is not unique, it's not
         an aberration. It reflects an overall trend in
         California. This Commission has licensed over
         11,000 megawatts of new generation since
         deregulation. The ISO's peak demand calculations
 9
         have dropped from 45,500 megawatts in the year
         2000 to 41,150 megawatts in this year. This
10
         reflects, in part, the conservation efforts that
11
12
         Californians have undertaken in order to reduce
13
         the load on finite supplies of natural gas and
14
         other fossil fuels, and a recognition of the fact
15
         that there are ways to meet our electrical needs
         through conservation, rather than approvals of
16
17
         additional plants.
                   Now, in addition to that very
18
19
         significant, well documented change in the energy
20
         supply and demand context, I wanted to summarize a
21
         number of the other points touched on in our most
22
         recent comments, to make sure this Commission
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Now, this Commission's charter is to recognize local ordinances, regulations, and

bears them carefully in mind.

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1
         standards, and attempt to co-exist with local
 2
         regulations, respecting the constitutional
         authority of California cities and counties to be
 3
         the primary decision makers for health and safety
         matters affecting the local citizenry, and that
         this Commission may override those local
         ordinances, regulations, and standards, only where
         essential in order to provide for the state's
         energy future. We've seen that the energy future
         doesn't require this facility, and that takes away
10
11
         the primary basis for this Commission's overriding
12
         of the local ordinances, regulations, and
13
         standards.
                   But in addition, a careful review of
14
15
         those standards reveals that many of them were not
         adequately addressed in this Commission's review,
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17
         and upon close scrutiny appear to be significant
         impediments to proceeding with this project.
18
19
         Significant impediments that will require this
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         Commission's very careful assessment before simply
         proceeding in derogation of -- in ignorance, in
21
22
         some cases -- of the local requirements.
23
                   We have listed a good dozen of these
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requirements in our comments. The principal ones

are the San Jose City General Plan forbids this

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1
        project. As a matter of land use planning, this
 2
         industrial facility would not be permitted in the
        campus/industrial land use designation. That's a
 3
         designation that anticipates research and
         development facilities, like the proposed Cisco
        project, not a heavy industrial power plant
         facility. This project would violate the height
         limits applicable to that General Plan designation
 9
        by a substantial margin. Those limits are -- are
         150 feet in the campus/industrial designation, and
10
         95 feet in the public/quasi-public land use
11
12
         designation.
13
                   This project would violate the General
14
         Plan's quidance for trails and pathways.
15
         Policy Number 1 forbids locating this project so
        close to the protected riparian corridor.
16
17
        project violates the San Jose Municipal Code's
         zoning designation of A, Agricultural, which has a
18
         35 foot height limit. This project would violate
19
20
         the North Coyote Valley Campus/Industrial area
        Master Development Plan. That's a specific plan
21
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Because it -- this project is not a high technology use, this project fails to provide the

provisions for North Coyote Valley.

adopted by San Jose to implement its General Plan

22

23

50 feet of landscaped setback required from the
Union Pacific Railway line. This project fails to
provide the 100 foot setback required between the
structures in this project and the property
owner's property line.

This project would violate San Jose's riparian corridor development guidance, which forbids the siting of noise generating facilities that would increase the ambient noise levels in protected riparian areas, because it harms wildlife. This project would exceed by a substantial margin the ambient noise levels in the adjacent riparian area.

This project would violate the General Plan's policy R-LU74, forbidding the siting of major gas pipelines in this area. Also would violate policy R-LU75, which forbids the location of metering stations adjacent to heavily traveled highways, in this case U.S. 101.

We have pointed out that this project would also violate the Bay Area Air Quality

Management District's regulations, three in particular. Rule 2-2-307 requires certification by the Applicant that all major air emission facilities in this state are currently in

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compliance. Contrary to that requirement, the
 1
 2
         certificate on file with the Bay Area Air Quality
         Management District is two years old. It's a 1999
 3
         certificate. Much has changed since then.
                   The project would violate Rules 2-2-101,
         -314 and -315, all of which require that a public
         hearing be held before the Bay Area Air Quality
         Management District can issue a PSD permit for
 9
         such a facility. No such public hearing was held.
                   Thirdly, this project would violate the
10
         Air Quality Management District's Rule 2-2-407.1,
11
12
         which forbids the Air Pollution Control Officer
13
         from taking final action on the permits required
14
         for this project until a final EIR or its
         functional equivalent is available. Now, under
15
         the law, this Commission's process has been deemed
16
17
         the functional equivalent to a final EIR.
         Obviously, this Commission's deliberations have
18
         not concluded yet. There is a pending motion to
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20
         reopen the evidentiary hearing. There is much
         information that would be vitally useful to the
21
22
         Bay Area Air Quality Management District's
23
         deliberations in assuring that it had all of this
24
         project's environmental impacts, its benefits, its
25
         relative necessity, or lack thereof, before the
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1 Air Quality Management District prior to reaching
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2 its decision.

So it would be premature for this

Commission to find that those Air Quality

Management District requirements have been met, or

will be met, because they haven't, and they cannot

possibly be until long after this Commission has

concluded the functional equivalent environmental

review process.

Mr. Ajlouny has noted a number of areas in which the evidence before this Commission does not support findings made in the Revised PMPD. I don't wish to belabor the points that he made, but please do pay attention to the discussion of those same points that appears in the comments we submitted on behalf of the Santa Teresa Citizen Action Group on September 7.

I think the Commission will find that there was a substantial change in the assessment of the noise impacts of this project by this Commission, over time, that has no factual or lawful basis. I am particularly concerned about the assumption that CEQA has built within it a five decibel fudge factor that will allow an applicant to automatically gain a handicap, if you

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will, of five decibels before exceeding the stated
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 2
         standard. There is no such exemption from the
        rule of law within CEQA, or any other applicable
 3
         statute, and certainly not in the regulations.
         This project would have a significant impact on
         noise, because it would exceed by as much as ten
         decibels the noise standards that apply.
                   This Commission should also heed your
         own Staff's careful assessment of the visual
         effects from this project. Your Staff correctly
10
         concluded, based on overwhelming evidence, that
11
12
         this project would have significant visual
13
         effects. It transforms a bucolic, natural
14
         appearing valley into an industrial zone. Surely,
         that is a significant change. It warrants
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         recognition as such in your assessment.
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I think also that the change in the PM10 emissions as a result of the addition of the oxidation catalyst mitigation has not been addressed properly, as Mr. Ajlouny noted.

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So for all of these reasons, I urge the Commission to stop and take notice. The facts have changed. The facts that were available to the Commission six months ago were not carefully and objectively reviewed. Both of those points

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1 require this Commission's denial of the
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- 2 application at this time.
- I urge the Commission to reopen its
- 4 hearing process to make sure that it has the best
- 5 current information and assessment by its Staff,
- 6 the Applicant, and the public, before moving
- 7 ahead.
- 8 Thank you very much. I'll be available
- 9 for questions if you wish me to remain standing.
- 10 CHAIRMAN KEESE: Thank you, Mr. Volker.
- And I will say I, too, applaud the public, who are
- 12 the ones who have made us get through this year
- 13 energy sufficient.
- 14 I don't have quite as rosy a view as you
- 15 do. I believe that we're still in jeopardy next
- 16 year, and I -- I hope that we're out of jeopardy
- 17 the year following.
- 18 I would say on the specific issue that
- 19 you raise with regard to the Air District, which
- 20 we felt was resolved, I -- I do believe we have a
- 21 representative of the Air District here. I would
- just ask if they would care to make a comment.
- MR. VOLKER: I'll step down, then.
- 24 Thank you.
- 25 CHAIRMAN KEESE: Thank you, Mr. Volker.

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                   MR. KWONG: Good morning, Commissioner
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         Keese and Members of the California Energy
         Commission. My name is Robert Kwong, I'm the
 3
         District Counsel for the Bay Area Air Quality
         Management District. I'm here representing the
         Air Pollution Control Officer, Ellen Garvey, and
         her staff.
                   There are three issues that have been
 9
         raised by the Santa Teresa Citizen Action Group.
         I just had the opportunity to review their
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         September 7th comments on the Revised PMPD, so I
11
12
         got a flavor for what those disputes are, and
13
         those are the same disputes that are currently
14
         before the Bay Area Air Quality Management
15
         District's Hearing Board, a quasi-judicial body
         that reviews permit appeals, and the Santa Teresa
16
17
         Citizen Action Group, along with some other
         parties, have appealed the District's decision
18
19
         with regards to that -- the Metcalf project.
20
                   Let me go to the certification issue.
         There was a citation to the District's Rule 2-2-
21
22
         307 regarding certification of compliance of other
23
         facilities owned and operated by the
24
         Calpine/Bechtel group. And the certification that
         we have on record that was filed with the District
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         when they applied for a determination of
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         compliance, as well as an authority to construct,
         is a valid certification, and it comports with all
 3
         of our rules and regulations, as well as any
         applicable federal regulations with regards to
         certification goes.
                   So I do not believe that that issue is
         one that would prevent or show that the District
         did not comply with its own rules, and therefore
         complies with air quality standards at least has
10
         been achieved, as far as that's concerned.
11
12
                   Secondly, the public hearing issue.
13
         There was a citation to the District's Rule 2-2-
         101, 314, and 315. The applicable requirements
14
15
         with regards to the District's issuance of a
         permit here really relate to the PSD, or
16
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         Prevention of Significant Deterioration permit.
         That procedure, which is guided by a delegation
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USEPA, indicates very clearly what the rules and requirements are. And the applicable federal standards are 40 CFR 52.21, not 51.166, which is cited by the Intervenor in this case.

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agreement to issue those PSD permits from the

In addition to that citation, it's very
important to know that the public hearing

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processes are governed by 40 CFR, part 124, not

even the ones that I've cited. So you can see

that there's a multiplicity of federal regulations

that are involved here. And it is clear that the

District did comply with 40 CFR, part 124. As you

will note in the Revised PMPD, I believe your

Staff, whoever prepared it, has indicated that the

U.S. Environmental Protection Agency's

Environmental Appeals Board issued a decision on

August 10th of this year finding that the PSD
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therefore was a valid issuance of that permit.

And there were substantive issues being adjudicated before the EAB, and the EAB, through its careful processes, found that the District's issuance of the PSD permit to the Metcalf Energy

permit did not violate federal standards, and

17 Center was a valid one, and did not require

18 review.

11

And finally, with regards to the issue
of District Rule 2-2-407.1, where it states that
the Air Pollution Control Officer shall not take
final action until a final CEQA document, whether
it be a Negative Declaration or a Final EIR, or,
in this case, a EIR equivalent through your
certified regulatory program, is done.

1	And it's very careful when you read
2	regulations, and I try to tell this to my own
3	client and to my staff, is that you have to see
4	this in context. The final action defined by the
5	District rules is the issuance of an authority to
6	construct, which has not yet taken place. And by
7	our own rules, we are to wait until this board, or
8	this Commission, makes its final determination and
9	provides us with that final CEQA document for
10	them, as as a responsible agency under CEQA,
11	then to move forward. And that is the procedure
12	that we are awaiting at this point in time.
13	So there has been no violation of the
14	District rules and regulations. We are operating
15	consistently with our own rules first, state law
16	second, and federal law, lastly. And when you
17	look at all of them together, we have comported
18	ourselves well under the law, and are in
19	compliance. And so I don't think that there's
20	anything here with regard to the District that
21	would stay your actions or prevent you from taking
22	action this morning, whatever way you decide to
23	go.
24	CHAIRMAN KEESE: Thank you very much.

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25 At this time --

1	MR. KWONG: Thank you.
2	CHAIRMAN KEESE: At this time what we're
3	going to do is we're going to take about a three
4	or four minute break. I then have, and I'm going
5	to list here, although I'm not absolutely sure
6	that everybody is going to speaking. I have Mr.
7	Garbett, Ms. Schambach, the Sobrato Group. Mr.
8	Alton is on the line again. Scott Scholz, R.F.
9	Williams, Libby Lucas, Phil Mitchell, and
10	Elizabeth Cord.
11	When we come back, I am going to ask
12	those individuals who have indicated they'd like
13	to speak how long they think they will be speaking
14	for, and I am inclined at this moment to feel that
15	whoever chooses to speak in the shortest period of
16	time will go first.
17	So we will we will take a five minute
18	recess here, and then we'll start again.
19	Thank you.
20	MR. VOLKER: Mr. Chairman, could I
21	respectfully request an opportunity for a one
22	minute rebuttal to the comments of Mr. Kwong?

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CHAIRMAN KEESE: I -- I'll --

CHAIRMAN KEESE: I will -- we'll

MR. VOLKER: I just have --

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25

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1 consider it during our break.
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- 2 MR. VOLKER: Thank you.
- 3 (Thereupon, a recess was taken.)
- 4 CHAIRMAN KEESE: We're back in order.
- 5 And let me just -- Ms. Schambach has submitted
- 6 written testimony. I gather she's not here. She
- 7 is not on the phone.
- 8 Is there anybody here --
- 9 MR. AJLOUNY: Roberta was asked to read
- 10 something. The Adviser, she was asked by PEER to
- 11 read something. So that's -- so maybe you can
- 12 write that down.
- 13 CHAIRMAN KEESE: Well, I'll check with
- 14 Roberta in a second.
- MR. AJLOUNY: I think that's --
- 16 CHAIRMAN KEESE: I -- I believe there's
- nobody here from Sobrato. Is that correct?
- 18 Betty Roeder has indicated one minute.
- 19 Mr. Alton has indicated one minute. By the
- 20 numbers, Mr. Garbett.
- MR. GARBETT: Five.
- 22 CHAIRMAN KEESE: Five minutes?
- Mr. Scholz.
- MR. SCHOLZ: I'd ask for 15.
- 25 CHAIRMAN KEESE: Mr. Williams.

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1 MR. WILLIAMS: Six minutes, sir.
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- 2 CHAIRMAN KEESE: Good number. Libby
- 3 Lucas.
- 4 MR. WILLIAMS: I was going to say five,
- 5 but then how would you decide between Mr. Garbett
- 6 and myself.
- 7 (Laughter.)
- 8 CHAIRMAN KEESE: Mr. Lucas -- I'm sorry,
- 9 Ms. Lucas. Libby Lucas.
- MS. LUCAS: I'll go for five.
- 11 CHAIRMAN KEESE: Phil Mitchell.
- MR. MITCHELL: Ten minutes.
- 13 CHAIRMAN KEESE: And Elizabeth Cord is
- on the line, has asked for 20.
- 15 So we have -- we have -- and Mr. Boyd
- 16 has asked if he could ask a brief question. I --
- I am -- we will hold, I would say if we stick with
- 18 the one hour that I see in front of me, that then
- we will have a moment for questions at the end.
- 20 But I -- my inclination would be just one time
- 21 through here, or we'll -- we may be here forever.
- Mr. Volker, you wanted one minute?
- We'll give you one minute.
- MR. VOLKER: Thank you very much.
- Just three quick points. Mr. Kwong is

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1 appearing as a party to the Hearings Board appeal.
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- 2 He represents the APCO. He does not represent the
- 3 Hearings Board. That's the entity that will make
- 4 the decision on the pending matters at the Air
- 5 Quality Management District.
- 6 Secondly, he indicated that EPA's
- 7 Environmental Appeal Board ruled on the merits of
- 8 Santa Teresa Citizen Action Group's appeal. In
- 9 fact, that's not the case. The EAB declined to
- 10 review, and thus did not issue a decision on the
- 11 merits of that appeal.
- 12 Thirdly, the certificate to which Mr.
- 13 Kwong made reference was dated May of 1999, and
- does not address a number of the facilities
- 15 operated by Calpine in this state that have come
- online since that time.
- 17 Thank you.
- 18 CHAIRMAN KEESE: Thank you.
- 19 We will -- Betty Roeder is on the phone.
- Ms. Roeder.
- MS. ROEDER: Yes.
- 22 CHAIRMAN KEESE: It's your -- your turn.
- 23 Speak up, please.
- MS. ROEDER: Thank you.
- 25 I'm Betty Roeder, and I'm President of

the Great Oak Water Company. We serve the

customers close to the Metcalf Energy location,

where they want to build.

And I find fault with the -- with the

study that's been done, because they have not

addressed the issue of the water percolation ponds

that are less than a mile from the Metcalf Energy

Center. In fact, percolation ponds are at Metcalf

Road and Monterey Road.

These percolation ponds are the source of water that we pump from our 16 wells, and we serve that water to the people who live in this community. The percolation ponds are open, of course, to the air, and contamination from the cooling towers at the MEC could drift across and get into the percolation ponds, and then get into the water that we serve the public.

This is an unusual problem for this location. I mean, to use reclaimed water in another location would not have the percolation pond situation which we have here.

Now, I would like a final decision on this at least delayed for a while, until we can have more testing of the effect of toxics and viruses and minerals that could be drifting across

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to these ponds, and we feel that they're -- the
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- 2 people in this area are particularly, oh,
- frightened, because in 1981, 20 years ago, we had
- a bad scare in this area when underground tanks at
- 5 Fairchild and IBM leaked toxics into the water.
- 6 That resulted in an expensive clean-up. I think
- 7 they spent over \$100 million so far, to clean it
- 8 up. And at the time there was talk of birth
- 9 defects, and it was very upsetting to our
- 10 customers, and lawsuits were filed.
- 11 And the homeowners are still here.
- They're the ones who suffered through the
- 13 Fairchild and IBM problems, and now they make it
- 14 known to me that they are definitely interested
- 15 and concerned about bad things that might come
- 16 into the water by way of the MEC treatment, or the
- 17 MEC plant.
- 18 Therefore, I would at least like to have
- 19 the situation studied, and I would like to have
- 20 additional testing done before the plant is built,
- 21 to use the reclaimed water in this area.
- Thank you very much for the
- 23 consideration.
- 24 CHAIRMAN KEESE: Thank you. Thank you
- 25 for those comments. I would -- I would wish that

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1 those comments had arrived earlier in this process
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- 2 so they could be responded to by Staff.
- MS. ROEDER: Well, I have written to
- 4 Staff. I have talked to Staff, and I have written
- 5 to the city, and I have written to EPA, and a few
- 6 other places. So I'm trying.
- 7 CHAIRMAN KEESE: Thank you.
- 8 MS. ROEDER: All right.
- 9 CHAIRMAN KEESE: Appreciate that.
- MS. ROEDER: Good-bye.
- 11 CHAIRMAN KEESE: Good-bye.
- Mr. Tim Alton, please.
- 13 MR. ALTON: Good morning. This morning
- 14 the Applicant and Mr. Richins both cited economic
- 15 benefits of the project as compelling arguments
- 16 for override of the City of San Jose's decision to
- deny MEC.
- There are statements on cost savings
- 19 within the PMPD, yet there is no evidence on the
- 20 cost of a megawatt hour from MEC to justify that
- 21 this is the only prudent means of addressing
- 22 electric supply in the area.
- The letter I submitted in response to
- the Revised PMPD showed that Calpine has MEC
- listed as supplying power for ten years to DWR, at

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1 a fixed price contract with a rate of return more
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- 2 than twice that recommended by the CEC's market
- 3 analysis.
- 4 Now, my main point in this letter is
- 5 that the excess profit from a mere six months of
- 6 operation would cover the cost of infrastructure
- 7 to site MEC in an unpopulated part of the eastern
- 8 Santa Clara County, for example.
- 9 In conclusion, if the ratepayers of San
- Jose are to pay excessive prices for the energy
- from this facility, then the Commission should not
- 12 override the wishes of the duly elected
- 13 representatives of those ratepayers. That seems
- to be adding insult to injury.
- Thank you.
- 16 CHAIRMAN KEESE: Thank you, Mr. Alton.
- 17 And thank you for sticking to your -- your time.
- MR. ALTON: Okay.
- 19 CHAIRMAN KEESE: Mr. Garbett.
- MR. GARBETT: Good afternoon,
- 21 Commissioners. William Garbett, speaking on
- 22 behalf of The Public.
- I thank you for your patience throughout
- 24 all these hearings. You have great intestinal
- 25 fortitude. It has been a long process. I think

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1\, \, that the hearings could have been concluded within
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- a year, except it has been drawn out unmercifully.
- 3 However, we have to look back. This is
- 4 just a mere process where the Commission approves
- 5 an application. An application is a very simple
- 6 thing, hopefully. And that's the end result is
- 7 you have to approve an application.
- 8 Your PMPD is a well written document,
- 9 and it specifically cites the authority of the
- 10 City of San Jose and its LORS. However, the City
- of San Jose and its LORS only uses the ANSI-C
- 12 weighted noise measurement scale. Therefore, any
- of your errata citing dBa for the A scale is
- incorrect and does not comply with LORS or
- 15 anything else.
- 16 There is a significant difference in the
- 17 hearing of the sound meters on the A scale from
- 18 the C scale. Basically, the C scale allows you to
- 19 hear like the low frequency sounds, such as a
- train, and the high frequency sounds such as a
- 21 turbine engine. Otherwise, they're excluded in
- the A weighted scale.
- Also, you haven't looked at the water
- that may be available at the Coyote Valley
- 25 Research Park, a 160 acre pond. How come that has

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1 never ever been considered to be drafted as a
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- 2 supply for your water supply? Since you don't
- 3 have a water supply identified, then I believe the
- 4 Commission must result to dry cooling at this
- 5 point in time.
- The application basically goes in and
- 7 has -- went through many iterations. At one point
- 8 in time you certified that application. However,
- 9 along about the third amendment, basically more
- 10 than half of that was stricken before a
- 11 replacement was entered into the record. At that
- 12 point in time your certification was lost. Also,
- 13 along the way, it was very liberal allowing the
- 14 Applicant to basically change the application at
- 15 will at any point in time. Sometimes in the same
- mail call, Calpine did one modification, and
- Bechtel undid that same modification by other
- things, keeping track of it.
- 19 Do you have a real certified application
- 20 at this point in time, complete in its entirety,
- for public viewing and public access. We've asked
- for it along the way. Can you trace it for us and
- find out what the true one is.
- 24 The witnesses that you presented, the
- 25 expert witnesses, I remember one witness that was

10

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22

23

2.4

25

project.

as we've seen.

sworn as -- as an expert witness, as being one
that is a prior hearing, the Santa Clara County
Attorney said that it was a B rated actor that
they had employed. Being as they could not find
an expert, they employed an actor. One of those
witnesses that appeared in this hearing was that
actor. I suggest that between -- he take a few
college courses to snap up for the next time we
see him, which we've seen him on the Metcalf

11 Some of these tests were fabricated 12 along the way, like the ones that came from 13 Richardson, Texas during the summer. And the 14 visual and the noise sections of the FSA were 15 basically invalidated September 6th by a hearing, which should've been a workshop, which was after 16 17 the evidentiary hearings had been completed, that we had to go and take into account in our briefs 18 on September 7th. So September 6th, you 19 20 invalidated things, and it was a bait and switch,

We're also concerned about the large amount of public money from the taxpayers to fund the infrastructure of MEC. One of the things about it is the taxpayers of the City of San Jose

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will be fronting all the money regardless of
 1
 2
         whether they have a benefit assessment district.
         The repayment schedule is not such where it would
 3
         ever be repaid to the city, so the taxpayers are
         going to be stuck. Therefore, it is not privately
         funded by Calpine/Bechtel, as presented, but yet
         it is actually a public project. And for those
         reasons, you should go and use dry cooling.
 8
 9
                   However, you look at the northeast
         transmission project. For instance, the Los
10
         Esteros crucial power plant, 01-AFC-12, and
11
12
         looking back at the original EIR and the one that
13
         followed that on the substation that they were
14
         going to build at Los Esteros. Through a couple
15
         iterations, we finally came down with what we call
         the EIR that the PUC had the last time around.
16
17
         that, they basically concluded that all the power
         plants would not be needed if they could just do
18
         about a half-mile interconnect between Milpitas,
19
20
         between the two high voltage lines that go through
         that area that are isolated now. Then they could
21
22
         both feed back and feed forward.
23
                   However, that isn't being done. And
24
         therefore, the new transmission lines are being --
         not being done, and therefore, the substation will
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not be built, which is a crucial thing where the
 1
 2
         Los Esteros project cannot be built. Or can it be
         built? Ah, that was one of our alternatives. It
 3
         wasn't practical, but yet it's to our forefront.
         These are issues that also face the Commission.
                   The question of the title on the
         property, as Mr. Kreamer has spoken originally.
         Because Mr. Kreamer had a stroke, there was
 9
         deception through a couple layers of the court to
         basically effectively steal his property from him,
10
         when he could not protest. This should stand as a
11
12
         cloud on the title, thereby making a question
13
         whether there is clear title even to the property
         where MEC can build. Or will the statute of
14
15
         limitations be renewed and, for instance, a cross-
         complaint bring back the property to Mr. Kreamer,
16
17
         or just compensation for the loss of his property.
                   So there are fatal errors in here, and
18
         the application itself is not any good because the
19
20
         evidentiary hearings aren't any good. And one of
         the reasons why is, is because during the process
21
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24 which is a unilateral medium, where communications

you changed the degree of proof. The proof of

service. You allowed the Internet to be used,

are broken down in packets, so you do not even

22

23

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1
        receive a complete packet.
```

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2
                   And Intervenors, some -- some of them,
         like myself, do not have access to the Internet,
 3
         and therefore could not even get service. There
         was no return of service required, or anything
         else. And therefore, you don't have proof of
         service for your evidentiary hearings, and
         therefore, you have no evidence for this case to
 9
         stand on, because an evidentiary proof has surface
         that is incomplete.
10
11
                   The transcripts would've been very
12
         helpful in providing for writing of briefs, but
13
         these were not supplied to certain people, because
         you stated it could only be obtained by the
14
15
         Internet. And yet the Commission refused to even
         allow us to go and use your own facilities when we
16
17
         was here in Sacramento.
                   Thank you.
```

18

19 CHAIRMAN KEESE: Thank you.

20 Ms. Mendonca, are you here? Can you

come forward. 21

22 Next we'll hear from Libby Lucas.

MS. LUCAS: Yes, I'm Libby Lucas. I'm 23

24 speaking from a private citizen standpoint.

Basically, I think that my concerns are 25

1 the fact that there seem to be alternatives for

- power sources and power plants, but there aren't
- 3 alternatives to the water resources aspect of this
- 4 site. Basically, you have a watershed of 222
- 5 square miles above Coyote and Anderson Reservoir.
- 6 That feeds into the reservoirs. The reservoirs
- 7 feed into Coyote Creek, and that comes right down
- 8 through the -- the narrows that are just below
- 9 this particular site, and that's 250 foot in
- 10 width. So all the waters that comes down from the
- 11 entire watershed goes into this particular area,
- 12 underground and above ground.
- 13 In the reference to the Porter Cologne
- 14 aspect of this, which is on page 33. The Porter
- Cologne Water Quality Control Act is -- it's
- 16 important that you keep the beneficial uses of a
- 17 water body intact. And it uses as reference the
- 18 Regional Water Quality Control Board's 1995 basin
- 19 plan, which was in high error in that it put -- it
- 20 didn't mention the fact that this was the water
- 21 supply source for two-thirds of -- well, actually,
- 22 the two reservoirs have two-thirds of the water
- for the entire Santa Clara County. That's
- 24 Anderson and Coyote.
- The underground water supply is one-half

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of everything that is used in the county, and so
 1
 2
         that means that two-thirds of that one-half is
         going down this creek. When they did that 1995
 3
         plan, the Regional Board, they put Coyote
         Reservoir on Guadalupe River. I was a director of
         the Resource Conservation District, which is a
         state body. We wrote to them two or three times,
         but it never got processed with the right person
         that had that lovely chart on whatever page it was
         in the regional plan, so it was never corrected.
10
                   So this is a false reference, to say
11
12
         there are no beneficial uses that are allocated
13
         for Coyote Creek, because this is the main source
14
         of drinking water for San Jose.
15
                   Henry Miller, back in the 1870's,
         whatever, had the property opposite this on the
16
17
         other side of Coyote Creek, and I think he was in
18
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whatever, had the property opposite this on the other side of Coyote Creek, and I think he was in litigation for 10 to 20 years, at the state level, to keep San Francisco water from taking this water for San Francisco, because it was of such high quality, and it was so valuable for the development of the city.

So to put something on this water source
that could maybe degrade it in any way is -- is
really -- it's tragic. You've got billions of

19

20

21

22

1 public taxpayer dollars already invested in this

- 2 area. You've got Coe State Park, 135 square
- 3 miles, the upper watershed that goes especially
- 4 into Coyote Reservoir. You've got 2,000 acres
- 5 going along Coyote Creek that the County Parks
- 6 bought from the Transportation, State
- 7 Transportation, for protecting the percolation
- 8 ponds and the percolation into the deep aquifer,
- 9 as was mentioned by the $\operatorname{--}$ the head of the Great
- 10 Oaks Water Company.
- This is absolutely essential for water
- 12 quality for the entire area. This water does not
- have to go through the treatment plants. The
- 14 treatment plants have every bit of capacity they
- 15 need for taking care of the imported water, the
- 16 Penitentia, the Santa Teresa, and it's very vital
- for this whole section that goes into the aguifers
- is unadulterated and does not have to go through
- 19 further treatment.
- So, as I say, this is a utility, the
- 21 water resource utility, that can't be moved
- 22 anyplace else. And the site, 82,000 gallons of
- oil, diesel oil, I mean, it -- your possibilities
- of an accident that will then instantly go down
- into the deep water aquifers, because it goes into

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1 the groundwater cascade, just past the narrows,
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- between that and the Edenvale gap, is -- it really
- 3 is taking an enormous chance. And power plants
- 4 aren't quite forever, but they're for a good
- 5 hundred years, usually.
- 6 So I really ask that you seriously look
- 7 at this aspect. And if you don't believe me, just
- 8 get the Triple A map, and it will show you exactly
- 9 how much greenery has been bought by the public to
- 10 protect this water source. And then Coe State
- 11 Park, the 135 square miles is up here. So this is
- 12 a very, very serious public utility that you're,
- 13 you know, working around.
- 14 And another thing I'd like to just
- 15 mention in passing, you can say well, it's going
- to be foolproof. Everything is going to have
- double containers, the operators will be
- 18 beautifully trained. But that isn't always the
- 19 case, because 25 years ago I was walking the
- 20 Cupertino hills, on a tributary to Stevens Creek,
- and all of a sudden I saw this little glimmer in
- 22 the stream, and my setter was swimming in pure
- 23 transformer oil. Someone had had an accident at
- 24 the PG&E Substation, half a mile up the -- up the
- creek, and PCBs are just -- it was in the soil, it

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1 was in the water, it was everywhere. Took my \log
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- 2 I think five days of beauty treatment to get her
- 3 coat cleaned.
- But I just think that you have to think
- 5 in terms of this resource. The water resources
- 6 are just as important, if not more than the power.
- 7 And this is the critical point, that enormous fan
- 8 of those 220 something square miles of watershed
- 9 funnel into this little bitty 250 foot wide
- 10 narrows, the Coyote Narrows. And your plant is
- going to be right there at the confluence of
- 12 Fisher Creek and Coyote Creek.
- 13 And another last thing is that the --
- 14 the railroad is another utility that I think you
- 15 really have to take into account, because the --
- some of the padding up for this site is going into
- 17 the railroad right-of-way. Right -- not just, you
- 18 know, they're going, instead of having a 50 foot
- 19 buffer they're going to 32 feet. But this actual
- 20 dirt fill is going into the -- the right-of-way
- 21 where the railroad tracks are.
- 22 And if you went for a, oh, a bullet
- train or something like that, you might find that
- the railroad needs every foot of what they have.
- 25 And this would indeed impact it.

1 So, the last thing is the check spot

- 2 butterfly, which will not survive this intrusion
- 3 into its habitat.
- 4 Thank you so much.
- 5 CHAIRMAN KEESE: Thank you.
- 6 Mr. Williams, you placed yourself right
- 7 next.
- MR. WILLIAMS: Thank you, sir.
- 9 I'm Robert Williams. For the benefit of
- 10 the three Commissioners who probably don't know
- me, I'm a retired engineer, spent 10 years at
- 12 General Electric, 20 years at EPRI, and have
- degrees in chemical engineering, nuclear
- engineering, and an MBA.
- 15 I began this process about two and a
- 16 half years ago. I have the confidence some of you
- 17 would say the arrogance to believe that I could
- 18 even sit as a Commissioner up there where you are.
- 19 I've observed the process now for two years. I've
- 20 grown to admire and respect some of Commissioner
- 21 Laurie's and Commissioner Keese's actions. But
- I'm here to tell you straight out that there are
- 23 major management difficulties with the way the CEC
- 24 manages these applications and conducts this
- 25 process.

1	Now, I hope the three Commissioners who
2	have not been part of the Siting Committee will
3	take this to heart, and either reopen the
4	evidentiary record or reject the plant out of
5	hand. Now, I will say in fairness to Commissioner
6	Laurie and Commissioner Keese, I don't believe
7	there was any way to stop this process until the
8	Presiding Member's Proposed Decision was in hand.
9	I think once the whirlwind is unleashed with an
10	AFC, I'd see no method in your record to to
11	stop it.
12	But here we are today, at the first
13	place where we can stop the process. And I hope
14	the three Commissioners who have not been party to
15	this two and a half year nightmare will take my
16	words to heart, and at least reopen the record to
17	clarify some of these terrible points. Or, better
18	yet, take the bull by the horns and reject the
19	plant.
20	Now, there are a couple of major reasons
21	for doing it. And I will just cite them in
22	general terms.
23	First, your management and your
2 4	interaction with the Air Quality Board is a
25	nightmare. You don't have control of the process

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1 or the ground rules under which air quality is
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- 2 analyzed. This little bit of particulate that
- 3 people talk about, it would push the plant over an
- 4 application, a threshold where onsite monitoring
- 5 and a whole set of different criteria would
- 6 pertain.
- 7 Well, the Siting Committee and the
- 8 Applicant have played games with this number for
- 9 the last two years. And I hope that -- that we
- 10 would clarify this matter if we reopen the
- 11 evidentiary record, and get down to the nitty-
- 12 gritty.
- 13 The second part, as I've seen it in my
- 14 -- because I've been on the other side of the
- 15 table for 30 years myself, this whole proceeding
- 16 has been given a data dump, as far as the need for
- 17 power and the need for electricity is concerned.
- 18 I ask any three of you who have not been party to
- 19 the Siting Committee process to try to unscramble
- 20 the analysis that was presented for the need for
- 21 power. I suggest that you will not be able to do
- it. It's over a thousand pages, and I would
- 23 suggest to you that because of the recent turn of
- events in the economy, in conservation, and what
- 25 have you, the relevant case is nowhere in

- 1 evidence.
- 2 However, this further highlights a
- 3 problem which you Commissioners have, and which
- again requires opening the evidentiary record.
- 5 The -- there is a three-way -- I can only call it
- 6 a circle jerk, and forgive me. But the -- both
- 7 PG&E, the California ISO, and the CEC Staff take
- 8 turns playing games with projections of power need
- 9 and power demand, and the effect on electric
- 10 system reliability.
- So it is a poorly managed process that
- 12 there is not a clear answer in the record to, and
- 13 it's pivotal in this case because the need for
- 14 power and the need for this plant is crucial to
- 15 the decision of override, and the decision to go
- 16 ahead.
- So I urge that now that we are at a
- point of decision, that for the first time you can
- 19 either accept or reject this plant, that the three
- 20 Commissioners take heart and just put us out of
- our misery by rejecting this project, or, if you
- feel the record is not quite robust enough, to
- 23 reject it. You at least reopen the hearings so
- 24 that the requisite information can be distilled
- from this morass of conflicting data.

1	Thank you.
2	CHAIRMAN KEESE: Thank you, Mr.
3	Williams. And it's been enjoyable participating
4	for the full two and a half years.
5	Mr. Mitchell, chose ten minutes.
6	MR. MITCHELL: It's an honor to address
7	you, Commissioners, this this afternoon.
8	My name is Phil Mitchell. I'm a
9	representative of the long-established Santa
10	Teresa community that surrounds this plant,
11	approximately a half a mile. Our first houses are
12	approximately half a mile from this facility,
13	proposed facility.
14	Our I wanted to say just a few words
15	to amplify what's been already said. There are
16	several impacts of concern from this proposed
17	power plant.
18	Beginning with air quality impacts, I
19	think it was mentioned earlier there was testimony
20	of five meteorological experts that I can
21	summarize their testimony by by pointing out
22	that they argued this was probably the worst
23	possible location within the whole San Francisco
24	Bay Area to site such a facility, given the

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meteorological conditions, the terrain, and the

25

1 elements of modeling that aren't taken into

- 2 account by the analyses that were done for this
- 3 plant.
- 4 Secondly, the health risk assessment
- 5 that was performed actually showed emission levels
- 6 during start-up and shutdown that are some 270
- 7 times the significance level of one, that's used
- 8 as a -- as an arbiter of what's safe, what's
- 9 perhaps unsafe. That's 27,000 percent above that
- 10 level of significance. That's essentially been
- ignored by the PMPD and the RMPD -- RPMPD.
- 12 We've heard already about the PM10
- impacts that have essentially been swept under the
- carpet by this proposed RMPD. The additional 16.7
- tons per year, which would take this over the 100
- ton per year limit that's required to have
- 17 additional analyses and additional mitigation by
- 18 the Air District, that -- that's essentially being
- ignored in this RMPD.
- 20 We've heard about the noise impacts. I
- 21 won't belabor those. The visual impacts, I think
- 22 are quite significant. I personally live about a
- 23 mile from the proposed facility, and I'm incensed
- 24 by the -- the long history of the Applicant
- stating there would be no plume, up until the very

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last minute, after the close of the evidentiary
hearing. And now it comes out that they cannot
technologically meet that standard, and they've
asked to weaken that standard significantly.
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I'd also like to point out that relatively recent evidence, I think the reason it was not presented earlier was it was simply not available, but this whole water toxics issue and the cooling towers, and the potential impacts on the percolation ponds that are right nearby the site is a very significant impact. Those first comments came out, I believe, a couple months ago, so it's not something that's just been noticed to the CEC. That's a significant potential impact that really does need some time to -- to further evaluate.

I'd also like to point out that we've been accused of being NIMBYs, and I think you've probably heard that. The Energy Czar called us NIMBYs on the public television program on energy in California. I'd like to take a very different view. I'd like to say that we've been arguing that we're not advocating this power plant be put in anybody's back yard. We believe that there are plenty of adequate acceptable locations that don't

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1 have to be shoe-horned in next to long established
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- 2 neighborhoods, next to percolation ponds, next to
- 3 long planned, long in the General Plan
- 4 developments for campus/industrial that's been
- 5 planned for -- for the area to the south.
- And so I'd like to say that this is not
- 7 equivalent to us being next to a proposed highway,
- 8 and the highway goes in and we object. Nothing
- 9 would be further from the truth on this project.
- 10 This project was never in the General Plan, never
- anticipated, and this is now going to be added if
- it were approved by you all, would be added on top
- of the long planned growth, and only exacerbate
- 14 the impacts of that long planned growth.
- 15 And lastly, you've heard about the
- 16 vastly changed need picture, which really goes to
- the heart of whether or not an override is
- justified on this matter. And we definitely do
- 19 not believe an override is at this point
- justified, nor would it stand up in court.
- 21 That's the last point I want to make
- about the impacts of the plant on our community.
- There's several others, but I won't go into all of
- them in detail.
- 25 The last point I want to make is simply

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1 that the process that we've gone through the last
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- 2 two and a half years. I have been, and the
- 3 community has been appalled at the lack of
- 4 objectivity and the ability of the Applicant to
- 5 continually get what they ask for, and the
- 6 community being put to the end of the train, the
- back of the bus, as it were. And I think you need
- 8 to look long and hard at your process and say
- 9 those who are the most impacted by projects ought
- 10 to have the most weight given to their comments,
- 11 not the least weight.
- 12 Thank you.
- 13 CHAIRMAN KEESE: Thank you.
- Mr. Scholz.
- MR. SCHOLZ: Good afternoon,
- 16 Commissioners. My name is Scott Scholz, I'm a
- 17 local resident to the proposed Metcalf Energy
- 18 Center, and I was -- I was an Intervenor in the
- 19 process.
- I have been involved in this project
- 21 from the beginning, and I've attended every
- hearing, conference, workshop, and meeting. This
- is actually the second time I have driven to the
- 24 CEC in Sacramento, as I was first here on June
- 25 23rd, 1999, for the MEC data adequacy hearing.

1	At that first Commission hearing in June
2	1999, Commissioner Moore said the MEC has the
3	potential to be the most complex of the filings we
4	have done to date. Then Vice-Chair Rohy said, I
5	am very upset with any case that comes forward to
6	us that does not have land control prior to us
7	beginning our work on a case. Here is another
8	example where we are going to get involved, we're
9	going to put a lot of resources into it with an
10	uncertain future as to whether land control will
11	actually be achieved.
12	Then Project Manager Lorraine White, in
13	response, said, at this time we have not got that
14	finalized, but we hope to soon.
15	Ms. Elizabeth Cord made the Commission
16	aware of many issues and problems with the
17	proposed project. After her presentation, then
18	Chairman Pernell said, seems like a lot of issues
19	there. Counsel for Applicant, Mr. Harris,
20	responded, the reason we have a one-year process
21	here is that it's so open with public meetings and
22	scoping these as to flesh out these kind of
23	issues. We are convinced a lot of these are

25 Commissioner Laurie interjected, I

communications issues.

1 deeply appreciate the information provided and the

- 2 interest of the public. I think they understand
- 3 our process will be a full participatory process.
- 4 They appear to be a very knowledgeable, interested
- 5 group. We fully expect to not only fulfill our
- 6 mandatory obligations by listening, but also
- 7 fulfill our mandatory obligations to do the
- 8 analysis necessary to respond.
- 9 And listening to the comments, I believe
- 10 all of those issues to be valid issues, all of
- 11 those issues to be issues that are fully addressed
- in the environmental analysis.
- Finally, Mr. James Boyd, representing
- 14 the Resources Secretary, Mary Nichols, said that
- day, I just look forward to seeing the discussion
- 16 and/or answers to what I thought were very good
- 17 questions in the future record.
- 18 The so-called communications issues were
- issues then, and remain issues today. This
- 20 project is only complex if you are trying to
- 21 approve it. By unanimous vote of 11 to zero, the
- 22 San Jose City Council rejected this project at the
- proposed location. Therefore, land use issues
- have not yet to be finalized. And considerable,
- 25 perhaps unprecedented, amounts of resources have

- 1 been put into this flawed project.
- 2 That's my speech.

9

21

22

23

24

25

night.

campus.

Why is the Coyote Valley and the Santa

Teresa area so important to the people that live

there? You must wonder why we -- we've endured

this two and a half year process. Without

complaint, by the way, as to how many meetings we

had to attend or how late those went into the

There's tremendous amount of impacts to 10 11 the development of the Coyote Valley, but those 12 were impacts that the community, as Mr. Mitchell 13 just addressed, that we were aware of. We knew could eventually come -- come to fruition. And 14 15 the community kind of reconciled the development of Coyote Valley, because it was promised to us 16 17 that the only development in the Coyote Valley would be high prestige campus/industrial corporate 18 19 offices. A place like a Sun or a Microsoft, that 20 have developed a whole community around their

The Cisco project, if that ever gets built, promises 20,000 jobs to our community.

Primarily, the San Jose area has been the housing supplier for most of the Silicon Valley. We're

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not where most of the jobs are, but we're where
most of the homes are. And the South San Jose,

Santa Teresa area probably represents 40 to 50

percent of the San Jose housing base. The houses
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are there, in South San Jose, not the industry.

So it seems natural when we suggested

back in '99 that if you're going to consider a

power plant project, why not look at the North San

Jose area, where all the industrial bases, where

all the energy is needed. That -- that ultimately

got analyzed as sites one and two, and was, you

know, a project area where this project could go

that was better than where -- where we stand right

now.

The Coyote Valley, like I said, is representing 20,000 jobs to this community. We used to be primarily a captive of IBM Corporation. They have a facility in our community. And I remember, as a kid growing up in the area, you know, one -- one out of every two, one out of every three houses, their father worked for IBM, or their mother worked for IBM. That's not necessarily the case anymore. The Cisco project, or whatever campus that comes to Coyote Valley, represents a great economic engine not only for

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1 the city, but also for the residents there. We
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- 2 won't have to commute as far to jobs, we'll be
- 3 able to get the high tech jobs right there, within
- a mile of our homes. And the support jobs that go
- 5 to those high tech jobs.
- We don't want to see that jeopardized.
- 7 And right now, that is in jeopardy, as long as
- 8 this project is -- still has the possibilities of
- 9 being approved.
- 10 The benefits I see in the North San
- Jose alternative site is that's where the recycled
- 12 water is. The plant is right there, and if we put
- 13 a power plant facility in that industrial area you
- wouldn't have to build a 10.2 mile pipeline
- 15 through our neighborhood streets, to connect it
- 16 from the -- the existing infrastructure down to
- 17 Coyote Valley.
- 18 This facility is being, you know, as Mr.
- 19 Mitchell just said, it's close to where all the
- 20 neighbors are, where our schoolchildren go, where
- there are daycare facilities for our children, and
- 22 a tremendous amount of recreational facilities in
- 23 that area. And we don't want to see that damaged.
- 24 I would think that you would hold a very
- 25 high threshold before you would utilize your

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1 override authority. And I don't think this
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- 2 project meets that threshold. I think the
- 3 integrity of the entire CEC process is at stake
- 4 here. All throughout this process we've been told
- 5 that this project would comply with all LORS.
- 6 Well, that's if it can. Otherwise, we'll override
- 7 them.
- 8 The project Applicant knew this was a
- 9 risky venture when they proposed it. They should
- 10 be not rewarded for their persistence. Thank you.
- 11 CHAIRMAN KEESE: Thank you, Mr. Scholz.
- 12 Ms. Cord is on the phone. Elizabeth
- 13 Cord.
- 14 MS. HARRIS: Ms. Cord has hung up.
- 15 (Inaudible asides.)
- MR. AJLOUNY: She's on her way, so
- she'll be here momentarily.
- 18 CHAIRMAN KEESE: Mr. Boyd, you said you
- had one question. We'll give you one question.
- MS. HARRIS: You'll have to wait until I
- 21 have time to get ahold of him.
- 22 CHAIRMAN KEESE: Okay.
- 23 (Inaudible asides.)
- 24 CHAIRMAN KEESE: All right. We have --
- Ms. Mendonca, would you like to approach the mic,

- 1 please.
- 2 PUBLIC ADVISER MENDONCA: Yes. The
- 3 Public Adviser's Office has received a letter from
- 4 California PEER, P-E-E-R, which is Public
- 5 Employees for Environmental Responsibility. And
- the author is Karen Schambach, S-c-h-a-m-b-a-c-h.
- 7 She's the California Coordinator.
- 8 She had planned on being here today, but
- 9 had a conflict in her schedule and so provided me
- 10 with the document. It's a three-page letter,
- 11 which I will summarize.
- 12 PEER, she is the California Coordinator
- for Public Employees for Environmental
- 14 Responsibility, or PEER, which is a national non-
- profit alliance of local, state and federal
- 16 resource professionals, scientists, land managers,
- 17 and law enforcement officers, dedicated to
- 18 upholding environmental laws and values. PEER is
- a service organization for government employees
- 20 and contractors charged with safeguarding our
- 21 nation's natural resources.
- So her comments today go towards her
- 23 information that she has received about the heart
- of our process of analysis and decision making.
- 25 She spoke with some Staff who are -- were

guaranteed anonymity, and she said most of the

Staff with whom she spoke feared for their jobs,

Staff here at the Energy Commission, and careers

if their managers thought they had discussed these

pressures. But they also believe very strongly

6 that a public trust is being violated and are

distressed by what they see as a perversion of the

8 CEQA process.

From their perspective, CEQA allows decision makers to override significant adverse impacts when those decision makers determine that a project's benefits are such that they outweigh the environmental impacts. But CEQA also requires that decisions be based on high quality truthful analysis.

At the Energy Commission, it appears that analysts are sometimes pressured to change their findings so that the decision makers do not have to make politically unpleasant decisions.

They may make the decision makers' lives easier, but it puts the analysts into moral, ethical and professional and legal difficulties.

Some analysts on the Metcalf project

have told me that their findings, when unfavorable

to the project, have been subject to extraordinary

1 scrutiny and deception at numerous meetings by

- 2 managers and attorneys. There is enormous
- 3 pressure to make the mitigations good enough.
- 4 Unfavorable comments from other agencies are
- dismissed as subject to interpretation. In some
- 6 instances, findings were changed over the
- objections of the analysts. In other cases,
- 8 analysts who failed to change their findings to
- 9 reflect more favorably on an impact were removed
- 10 from the project.
- 11 Analysts were pressured to meet the 12-
- 12 month Metcalf approval schedule even though the
- 13 Applicant kept making changes to the project.
- 14 This put additional pressure on Staff. As many of
- 15 the changes to the project resulted in reduced
- 16 mitigations and increased environmental impacts,
- 17 Staff was also under additional pressure to put
- 18 the best possible face on those changes, so that
- decision makers are not faced with politically
- 20 damaging decisions.
- Not all analysts were subject to these
- 22 pressures, but it is clear that when an issue was
- 23 a potential show-stopper, CEC managers and
- 24 attorneys were not shy about intervening to have
- an analyst justify or reconsider a finding of

1 significant impact. This is not the way it's

2 supposed to work. The Energy Commission, its

3 Staff, have a public trust duty to truthfully

4 analyze and disclose environmental impacts, and to

5 mitigate those impacts where possible. And if

6 mitigation is not feasible, decision makers must

7 explain why residents must live with the impacts

8 or why another site was not chosen.

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Another CEQA question is raised by the scheduling of a number of compliance meetings between Staff and Calpine to discuss how the facility will meet licensing conditions.

According to Staff, holding these compliance meetings prior to the licensing has set a bad precedent. This suggests that a decision to award a license for Metcalf -- for the Metcalf site has

already been made, and that the conditions in a

yet to be adopted document are those that must be

met.

Managers would argue that these

premature meetings are necessary to get the plant
online as quickly as possible. However,

regardless of the governor's wish to expedite the
building of power plants, predetermined decisions
deny the public's ability to affect a decision, a

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1 role that is fundamental to the process.
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- 2 If this Commission decides residents
- 3 must live with increased pollution or other
- 4 quality of life degradations because another site
- 5 or stronger mitigations would increase the cost to
- 6 the Applicant, you can do so with a finding of
- 7 overriding considerations. But the analyst must
- 8 fully and truthfully disclose those impacts.
- 9 Overriding these significant impacts may
- 10 be a politically distasteful option, but it is the
- 11 way CEQA is intended to work. That ensures that
- 12 the public can make their own educated decisions
- about who they elect to represent their interests
- in the future.
- Thank you for the opportunity to
- 16 comment. Respectfully submitted, Karen Schambach,
- 17 California Coordinator.
- 18 CHAIRMAN KEESE: Thank you.
- 19 Do we have Mr. Boyd on the line? Who do
- we have on the line?
- MR. BOYD: Hello.
- 22 CHAIRMAN KEESE: As usual, Mr. Boyd,
- you're -- you've asked for the final word. One
- 24 question. You said you have one question.
- 25 MR. BOYD: Well, I actually have --

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well, in light of PEER, I have another question.
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- But I had two questions, actually.
- Basically, I wanted to know if you guys
- 4 could provide me a written notice of the statute
- of limitations to bring a CEQA challenge, which
- 6 specifies the --
- 7 CHAIRMAN KEESE: I -- I'm sure you --
- 8 you could --
- 9 MR. BOYD: -- the date the statute
- 10 begins and ends, because as you know, I was
- involved in the Blythe case, and that was an issue
- 12 there.
- 13 CHAIRMAN KEESE: The -- this Commission
- 14 sitting up here is not going to be able to give
- 15 you that, but you're certainly welcome to talk to
- 16 our Siting or Legal Counsel afterwards and find
- out what those time parameters are.
- MR. BOYD: Okay. And then --
- 19 CHAIRMAN KEESE: I'm not sure that we --
- 20 COMMISSIONER LAURIE: Wait, wait, wait.
- 21 CHAIRMAN KEESE: -- give you legal
- 22 advise, sir.
- 23 COMMISSIONER LAURIE: Thank you, Mr.
- 24 Chairman.
- MR. BOYD: Oh, okay. I just wanted --

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1 I just wanted something in writing saying when the
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- date starts and ends, that's all.
- 3 CHAIRMAN KEESE: No. No, no. We're not
- 4 going to -- we're not going to give you legal
- 5 advice. We'll give you a reference to where
- 6 you'll find something.
- 7 MR. BOYD: Okay. Okay. Then my other
- 8 question has to do with this -- I got something in
- 9 the mail on Friday, some amendments to the -- to
- 10 the Proposed Decision.
- 11 CHAIRMAN KEESE: You got an errata?
- 12 MR. BOYD: Yeah, an errata. And one of
- the items on there had to do with the Supreme
- 14 Court, where that's where we have to file if we're
- going to file this in the Supreme Court, as
- opposed to the Superior Court. And I would --
- 17 would like to know if you're going to be voting on
- 18 that errata change today.
- 19 CHAIRMAN KEESE: Yes, we will.
- 20 MR. BOYD: So my question is, do you --
- 21 do you believe that that complies with the
- 22 requirements of the Bagley-Keene Open Meeting Act
- for ten days' written notice in advance of action
- 24 taken.
- 25 CHAIRMAN KEESE: Mr. Valkosky.

1	CHIEL	HEARING	OFFICER	VALKOSKY:	ı'a

- 2 like to clarify the errata which has been
- 3 distributed to all parties. After discussion with
- 4 the Office of the Chief Counsel, both offices
- 5 deemed it preferable to specify dates in the
- 6 existing adoption order concerning the expiration
- 7 of various appeal and reconsideration periods.
- 8 Those are contained in the errata. And basically,
- 9 they --
- 10 CHAIRMAN KEESE: There's no -- there's
- 11 no substantive change.
- MR. BOYD: Well, I --
- 13 CHIEF HEARING OFFICER VALKOSKY: They
- 14 merely reflect --
- 15 MR. BOYD: -- appear in court before,
- now you're saying I can't --
- 17 CHIEF HEARING OFFICER VALKOSKY: -- the
- 18 applicable law.
- MR. BOYD: You said before I could file
- in the Superior Court. Now I can't. I think
- 21 that's a significant change. And I believe that
- you are required to notify me ten days in advance
- 23 before you take action on that.
- 24 And that's just my opinion, and you can
- 25 ignore it at your own risk.

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                   CHIEF HEARING OFFICER VALKOSKY: All I
 2
         can say is that changes contained in the errata
         concerning the appeal dates reflect our best
 3
         understanding of the applicable law.
                   MR. BOYD: Okay. Then my -- my last
         question is with regard to the -- the PEER
         information that you just --
                   CHAIRMAN KEESE: No -- no --
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 9
                   MR. BOYD: -- I would like to know --
10
                   CHAIRMAN KEESE: No, Mr. Boyd. That --
                   MR. BOYD: -- what I have to do to make
11
12
         a motion for reconsideration on that.
13
                   CHAIRMAN KEESE: Mr. Boyd, that's --
14
         that's the end of your questions. PEER spoke for
15
         themselves.
                   MR. BOYD: You know, I --
16
17
                   CHAIRMAN KEESE: That will -- that
         will --
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19
                   MR. BOYD: -- when can I make a motion
20
         for reconsideration?
                   CHAIRMAN KEESE: That will conclude the
21
22
         comments on this case. I will -- I will just
23
        mention that -- that I was contacted by Ms. Cord
24
         shortly after 10:00 to say that she thought the
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hearing was at 1:00, and she'd be here. That's

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1 over three and a half hours ago.
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- 2 MR. AJLOUNY: She had a family
- 3 emergency. She --
- 4 CHAIRMAN KEESE: Okay. Well --
- 5 MR. BOYD: Okay, that's fine. Thank you
- 6 -- thank you for your time, and I just want an
- 7 objective response.
- 8 CHAIRMAN KEESE: You're welcome.
- 9 No, no. We can't -- we can't just keep
- 10 going. So that will close that. The -- the -- we
- 11 have the PMPD which has been presented in front of
- 12 us.
- 13 My question to my fellow Commissioners,
- 14 particularly those three who were not sitting on
- 15 the Committee, would be, do you have any questions
- 16 of Applicant, Staff, or Commissioner Laurie at
- 17 this time?
- 18 COMMISSIONER MOORE: Mr. Chairman, I,
- 19 Commissioner Moore, would like to ask about those
- 20 items that have been cited as errors or as being
- 21 incorrect in reference in the document. There
- 22 were many citations or allegations of data
- 23 inadequacies or misrepresentation of data that
- 24 were made during the testimony that we received.
- 25 And while I did not document each one as they were

being mentioned, they've been included in some of

- 2 the documents that were submitted to us.
- 3 And I guess I would turn to Commissioner
- 4 Laurie, as the Presiding Member, and ask him in a
- 5 broad sense, and then I'd turn to Staff in a more
- 6 narrow sense, and ask if these were items or areas
- 7 that were heard at one or more evidentiary
- 8 hearings conducted and presided over by either one
- 9 of the Commissioners on the Committee.
- 10 COMMISSIONER LAURIE: Thank you,
- 11 Commissioner Moore. There was nothing of
- 12 discussion today that had not been previously
- 13 considered. And that includes references to
- 14 specific data.
- 15 I -- I think there may be some
- disagreement among the parties regarding
- interpretation of such data, but there is
- 18 certainly nothing that has been brought to this
- 19 Commission in the first instance for today.
- 20 We've heard multiple hours of
- 21 disagreement with specific findings, as allegedly
- 22 consistent with the evidence. If you have
- 23 specific questions, Commissioner Moore, I'd call
- on Mr. Valkosky, as well as Staff, to attempt to
- 25 seek to clarify.

1	COMMISSIONER MOORE: Well, I'll go there
2	in just a moment to Mr. Valkosky, I believe. But
3	before I do that, let me ask if the City of San
4	Jose representative could come up to the podium
5	and answer a couple of questions for us.
6	MS. PREVETTI: Laurel Prevetti, Acting
7	Deputy Director of Planning.
8	COMMISSIONER MOORE: Good afternoon.
9	And let me ask you, with regard to the action that
10	was referred to before, a previous vote on the
11	part of the City Council, what is the current
12	official position of the city with regard to this
13	project?
14	MS. PREVETTI: In November of 2000, the
15	City Council did vote unanimously to deny a
16	request for a General Plan amendment. However, in
17	June 2001, the City Council did agree and adopt a
18	cooperative agreement with Calpine/Bechtel
19	regarding the Metcalf Energy Center, and that
20	agreement spelled forth various provisions for
21	both parties to adhere to with respect to the
22	project.
23	COMMISSIONER MOORE: So, help me with
24	this for a second. Is that the moral equivalent
25	of the precursor to a General Plan amendment?

1	MS.	PREVETTI:	No.	No.	The	project
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- 2 remains out of compliance with the General Plan.
- 3 COMMISSIONER MOORE: And so what effect
- does that agreement have, what -- what does that
- 5 tell you, as a planner, that you need to do in
- 6 terms of processing an application, for instance,
- 7 that might come of this?
- 8 MS. PREVETTI: We are not processing any
- 9 applications at this time regarding Metcalf. The
- 10 City Council did approve the annexation of the
- 11 property, of a portion of the property that was
- 12 previously within the county, so that action has
- occurred. The -- the agreement essentially
- 14 identifies various actions for both parties with
- 15 respect to the more detailed elements of
- implementation.
- 17 COMMISSIONER MOORE: And is there an
- 18 objective stated in that agreement? The agreement
- is in order to accomplish XYZ?
- 20 MS. PREVETTI: Let me get it. One
- 21 moment.
- 22 (Pause.)
- MS. PREVETTI: There are several
- 24 purposes to the agreement that are listed, and let
- 25 me summarize them for you.

1	They basically have to do with water
2	recycling, and that essentially the city is
3	intending to establish a cooperative working
4	relationship between the parties, between the city
5	and Calpine to designate the San Jose Municipal
6	Water System as the provider of potable and non-
7	potable water supply.
8	Let's see. To institute various and
9	specific environmental monitoring for the MEC, and
10	various other provisions. It's quite lengthy.
11	COMMISSIONER MOORE: And why would
12	why would your decision makers take an action like
13	that if they didn't anticipate that this would in
14	the end be a land use that would ultimately be
15	permitted by the city?
16	MS. PREVETTI: I believe the City of San
17	Jose recognized that it also is committed to
18	assuring reliable energy source for the community,
19	and that at the time the application had already
20	been heard, and did not wish to revisit that.
21	COMMISSIONER MOORE: Does your zoning
22	code have an M-zone, or a variant on the M-zone
23	that allows power plant development?
24	MS. PREVETTI: It does.
25	COMMISSIONER MOORE: And can you tell me

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a little bit about the annexation procedure.
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 2
         of the difficulties, as I heard it early on, was
         the issue of whether or not water or other utility
 3
         services could be extended through the municipal
         agency, and that those would only be available
         through an annexation. And I'm assuming that
         LAFCO took this into account in the annexation
         proceedings?
 9
                   MS. PREVETTI: Actually, within the city
         -- within Santa Clara County, we have an agreement
10
         that if a property is within a city's urban
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12
         service area, you do not need to go to LAFCO. So
13
         the city acted independent of LAFCO when it did
14
         hear the annexation.
                   COMMISSIONER MOORE: Okay. So this --
15
         this was in fact previously within the urban
16
         service district, and -- and this is just a
17
         reaffirmation of that.
18
                   MS. PREVETTI: That's correct.
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20 COMMISSIONER MOORE: Has there been any
21 action taken by your Planning Commission that
22 would be the precursor of a change in the General
23 Plan?

MS. PREVETTI: The Planning Commission
is a recommendation body to our City Council.

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1 They did hold public hearings last fall, as well,
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- 2 prior to the council's action with respect to the
- 3 General Plan amendment. They recommended
- 4 favorably towards the changes of the General Plan.
- 5 COMMISSIONER MOORE: And -- and the City
- 6 Council has not taken action on -- on that
- 7 recommendation as yet.
- 8 MS. PREVETTI: Yes, they did. They did
- 9 in November of 2000.
- 10 COMMISSIONER MOORE: Oh, I'm sorry.
- 11 Excuse me. They did.
- 12 And has there been any move to
- 13 reconsider that action?
- MS. PREVETTI: No.
- 15 COMMISSIONER MOORE: Thank you very
- much.
- MS. PREVETTI: Thank you.
- 18 COMMISSIONER MOORE: Mr. Valkosky, can I
- query you on some of the testimony that we've
- 20 received today? You've been present through all
- of the hearings, as I understand.
- 22 CHIEF HEARING OFFICER VALKOSKY: That's
- 23 -- that's not correct.
- 24 COMMISSIONER MOORE: Through most of the
- 25 hearings?

1	CHIEF HEARING OFFICER VALKOSKY: Through
2	many of the hearings. I had I had surgery
3	during the conduct of these hearings.
4	COMMISSIONER MOORE: Get the adjective
5	right here, if I keep going, I suppose.
6	All right. With regard to the testimony
7	that we've had today, and the document that's
8	before us, which Commissioner Laurie maintains is
9	a full recordation or reflects the full
10	recordation of the of the hearings, are there
11	items that were brought up in testimony today that
12	need to be further reviewed, that are somehow not
13	contained in the body of of the evidence that
14	we have in front of us?
15	CHIEF HEARING OFFICER VALKOSKY: In my
16	opinion, Commissioner Moore, the only items
17	brought up today that were not presented during
18	the hearings concern the and it's been loosely
19	phrased as the need question, the changed
20	circumstances, the intervening level of
21	development, and the changed circumstances that
22	has occurred since the conclusion of the hearings.
23	That was brought up in the motion to reopen by Mr.

Everything else, in substance and in

24 Volker.

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1 virtually every permutation that I can think of
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- was presented to the Committee. Was considered by
- 3 the Committee.
- 4 COMMISSIONER MOORE: I'm assuming that
- 5 during the long hours in which Commissioner Laurie
- 6 personally typed this report --
- 7 (Laughter.)
- 8 COMMISSIONER MOORE: -- you were an
- 9 advisor to his efforts during that period, and so
- 10 let me ask whether or not the knowledge before the
- 11 publication of the Proposed Decision was made.
- 12 Were you knowledgeable about other applications in
- 13 the South Bay region generally, for power plants,
- 14 nominally all peakers -- peakers, so-called peaker
- 15 plants.
- 16 CHIEF HEARING OFFICER VALKOSKY: To my
- 17 recollection, the initial PMPD came out June 18th,
- 18 I believe. At that time there were -- and I -- I
- 19 can't identify them, but there were peaker plants
- 20 before the Commission. I don't recall whether
- they were for South San Jose or for whatever area
- in the state.
- 23 COMMISSIONER MOORE: The power -- some
- of the power plants in Gilroy have to take
- 25 advantage of a transmission upgrade, if they're

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going to proceed. And I would ask whether or not
2
       knowledge of that was available to the
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- Commissioners when they were writing the decision. 3
- CHIEF HEARING OFFICER VALKOSKY: The
- knowledge that was available to the Commissioners
- concerned the installation of the MEC Project at
- the proposed location. There were no upgrades
- associated with the MEC project. There was no 8
- 9 specific testimony, to my recollection, concerning
- any upgrades that may or may not be associated 10
- 11 with the Gilroy projects within the confines of
- 12 this proceeding. And again, I -- I could be
- 13 corrected on this. That was not one of the
- 14 hearings I was in attendance at.
- 15 COMMISSIONER MOORE: Thank you, Mr.
- Valkosky. 16

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- 17 COMMISSIONER PERNELL: Mr. Chairman,
- just --18
- 19 CHAIRMAN KEESE: Commissioner Pernell.
- 20 COMMISSIONER PERNELL: -- a follow-up on
- the -- on the need question. As I recall, the 21
- 22 legislature passed a bill that took that
- 23 determination out of our hands. Is that correct?
- 2.4 CHIEF HEARING OFFICER VALKOSKY: That is
- correct, Commissioner Pernell. The decision in 25

1 the end of the introductory section discusses why

- 2 we're not doing need in the traditional sense.
- 3 The basic reason for that, as you correctly
- 4 recall, is that SB 110 removed that as one of our
- 5 mandates.
- 6 COMMISSIONER PERNELL: Thank you, Mr.
- 7 Chairman.
- 8 CHIEF COUNSEL CHAMBERLAIN: Commissioner
- 9 Pernell, I -- I believe, just for clarification,
- 10 however, the -- the question is before the
- 11 Commission because the Commission is considering
- 12 an override. And the override requires the
- 13 Commission to determine whether there is a public
- 14 convenience and necessity and no more prudent and
- 15 feasible means of meeting that public convenience
- 16 and necessity. So that is the context in which
- 17 the argument about need is being presented to you.
- 18 COMMISSIONER PERNELL: Thank you.
- 19 CHAIRMAN KEESE: Thank you. Any other
- questions from the Commissioners?
- 21 At this time, then, I think I'd like to
- dispose of a few issues that we have before us.
- 23 Mr. Boyd's two motions were -- were held to be
- 24 moot, with his concurrence.
- 25 The time limit for the Santa Teresa

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1 Citizens Action Group, obviously is mooted.
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- 2 The Santa Teresa Citizens Action Group
- 3 has also moved to reopen the record. Has -- I'm
- 4 sorry, has suggested that we should reopen the
- 5 record. I'd like to deal with that one.
- Do I hear a motion?
- 7 COMMISSIONER MOORE: Let me -- let me
- 8 understand the question. You -- this is not
- 9 reopen the record, it's reopen the evidentiary
- 10 hearings. Is that correct?
- 11 CHAIRMAN KEESE: Reopen the evidentiary
- 12 hearings, yes. That's --
- 13 COMMISSIONER MOORE: I -- I think --
- 14 Mr. Chairman, absent a motion to -- to reopen by
- one of the -- one of the members, I don't believe
- 16 -- it fails for lack of a motion.
- 17 CHAIRMAN KEESE: That's -- that's
- 18 correct. If -- we have no motion on that issue.
- 19 The -- the final was a more complex
- 20 motion with regard to the Bay Area Air Quality
- 21 Management District. We've heard it from both
- 22 sides, and from Mr. Valkosky. Does anybody wish
- 23 to make a motion on that issue?
- Hearing none, that item is over, also.
- The issue is now before us.

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1 Commissioner Laurie.
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- 2 CHIEF COUNSEL CHAMBERLAIN: Mr.
- 3 Chairman, before you proceed to that stage, I
- 4 would simply like to make a statement for the
- 5 record relating to Mr. Boyd's final -- I hope Mr.
- 6 Boyd is still on the line, listening -- with
- 7 respect to his final point.
- 8 The items that are in the errata that
- 9 deal with the thing that he requested, he
- 10 requested to know when he could make a motion for
- 11 reconsideration, and when the period the statute
- of limitations would run.
- 13 We have placed in there, in the adoption
- 14 order, the Commission's view as to what the law
- 15 requires. With respect to his assertion that this
- 16 was placed in -- in violation of the Open Meetings
- 17 Act, the Open Meetings Act does not require ten
- 18 days notice of every word that's in your decision
- 19 or in your -- your Adoption Order, only ten days
- 20 notice of this hearing.
- 21 COMMISSIONER MOORE: Mr. Chamberlain --
- 22 Mr. Chairman, if I can ask --
- 23 CHAIRMAN KEESE: Thank you.
- 24 COMMISSIONER MOORE: -- just one other
- point that probably lingers, in terms of Mr.

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1 Boyd's comments. And that is whether or not
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- there's an appeal possible to the Superior Court.
- 3 It is my understanding that actions of this body
- 4 in this context can be appealed, but they can only
- 5 be appealed to the State Supreme Court.
- 6 CHIEF COUNSEL CHAMBERLAIN: That is
- 7 correct.
- 8 COMMISSIONER MOORE: So if he was under
- 9 the misunderstanding that the Superior Court of a
- 10 certain county was the next stop in question, it's
- 11 reasonable to disabuse him of that notion because
- in fact, the law says that's not where it stops.
- 13 It goes straight to the Supreme Court.
- 14 CHIEF COUNSEL CHAMBERLAIN: That's
- 15 correct.
- 16 COMMISSIONER MOORE: Thank you.
- 17 CHAIRMAN KEESE: Thank you, Mr.
- 18 Chamberlain.
- 19 Commissioner Laurie.
- 20 COMMISSIONER LAURIE: I don't have
- 21 anything further, Mr. Chairman.
- 22 CHAIRMAN KEESE: Do I hear a motion?
- COMMISSIONER MOORE: Well, Mr. Chairman,
- let me understand from counsel what the
- appropriate series of motions would be if the

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         Presiding Member's Proposed Decision is going to
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         be adopted. Then are there steps in the middle
         that have to be taken, or is it simply an adoption
 3
         of the report as submitted, or as modified?
                   CHIEF COUNSEL CHAMBERLAIN: There is an
         Adoption Order that adopts the -- the Revised
         Presiding Member's report. And there is an errata
         which should also be incorporated into -- into a
         motion to adopt the Adoption Order.
10
                   CHAIRMAN KEESE: Well, the Chair would
11
         welcome a motion to adopt the Proposed --
12
         Presiding Member's Proposed Decision, with the
13
         Committee errata, which has been distributed.
                   COMMISSIONER LAURIE: I have spoken
14
15
         through my Presiding Member Proposed Decision, Mr.
         Chairman.
16
17
                   CHAIRMAN KEESE: Is that -- is that a
         motion to --
18
19
                   COMMISSIONER LAURIE: No, sir.
20
                   CHAIRMAN KEESE: I'm sorry, I'm --
21
                   (Parties speaking simultaneously.)
22
                   CHAIRMAN KEESE: Commissioner Laurie is
23
         yielding to somebody else to make the motion.
24
                   COMMISSIONER ROSENFELD: I move the --
25
                   CHAIRMAN KEESE: Commissioner Rosenfeld
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1 moves the adoption of the Presiding Member's
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- 2 Proposed Decision, with the Committee errata,
- 3 which has been distributed.
- 4 CHIEF COUNSEL CHAMBERLAIN: And the
- 5 Adoption Order.
- 6 CHAIRMAN KEESE: And the Adoption Order.
- 7 COMMISSIONER ROSENFELD: And the
- 8 Adoption Order.
- 9 COMMISSIONER PERNELL: Second, Mr.
- 10 Chairman.
- 11 CHAIRMAN KEESE: Commissioner Pernell
- 12 seconds.
- 13 COMMISSIONER MOORE: On the motion.
- 14 CHAIRMAN KEESE: On the motion,
- 15 Commissioner Moore.
- 16 COMMISSIONER MOORE: Mr. Chairman, I
- 17 believe that this is one -- I go back to a comment
- 18 that someone referenced that I made at the early
- 19 part in data adequacy, of this, and I believe this
- 20 to be one of the most complex cases that we have
- 21 heard, and not necessarily because it should've
- been, but because it, as it evolved, took
- 23 labyrinthine twists and turns. And frankly, I
- 24 want to take a moment to comment on what we may be
- about to do, and see if I can put it in context

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for -- for what comes next.
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2.4

I believe that this project stands

outside some of the emergency directives that were

guiding some of our earlier decisions, and on

which I have made pretty public comments about the

usefulness of proceeding in that fashion. I won't

revisit that today.

But I believe that in the normal course of events, this type of process, although it probably should've been allowed to go in a much shorter timeframe, could be described as the classic or traditional method of processing a large-scale power plant in the State of California.

And I think that it, in the sense, the truest sense of public involvement, witness the people that have hung with this for a long period of time and who used the process even up to the point of commenting on the Proposed Decision today, that that public process is working, and that it, in fact, if it doesn't always result in a reversal or a complete change -- complete change of policy, that it effects a better law, it effects a better set of circumstances, and as a consequence whatever commitments we make to a

1 project and its mitigation, they're better off

2 than if we didn't have the public process. In

fact, they're -- they're smooth, and in fact, made

4 better.

18

19

20

21

22

23

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25

I think that in the future, some of the independence, if it can be described as that, that we'll enjoy in our energy world here will come from having more localized power plants sited at 9 or near the communities that will depend on them. But I -- I think one of the things that will 10 mitigate that is the fact that out into the 11 12 future, we will begin to diversify and put less 13 dependence on some of our natural gas reserves. I 14 think the next -- next round of projects that we 15 see 10, 15 years from now, are likely to be more decentralized than what we've seen in the past, 16 17 and perhaps even more dependent, I hope, on

For the time being, though, it seems to me we have a difficulty in trying to plan for a static target, and I refer to the documents which were released under the Energy Outlook, which came out of my Committee, and which forecast that we would be in better shape than we felt we were going to be in for the next year.

renewable resources.

1	Those don't go to the question of what
2	shape we'll be in in ten years, because we haven't
3	released those figures yet. And, in fact,
4	planning for the following year and saying that
5	that we don't need new resources because we'll be
6	just fine next year, it seems to me from our point
7	of view as a decision maker, is not responsible,
8	and that we have to have a longer term horizon, a
9	better discount rate, as I've been saying many,
10	many times in the past.
11	So I think that means that we have to be
12	looking ahead for the bigger power plants, and
13	imagine that they can be sited responsibly and put
14	in action before they're needed, so that we don't
15	run into a demand crunch, because, as we've seen,
16	if there's a great gap between planning and
17	actually implementing the plants themselves,
18	before they come online.
19	So, having said that, I'll tell you that
20	and having listened to to the discussion

So, having said that, I'll tell you that

-- and having listened to -- to the discussion

that's here, I'm prepared to support the Presiding

Member's Proposed Decision. And I simply say that

it seems to me it's been a responsible process. I

know that various of us have taken umbrage at the

way various officials have gotten involved in

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1 this, in ways that they perhaps shouldn't have.
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- 2 And I'm sorry that it happened that way. And I
- 3 hope that the process has matured and is better
- 4 off, as I leave the stage, going on to other
- 5 things, that it's -- it's better for the kind of
- 6 work that everyone did on this project.
- 7 And I'm -- I personally am very proud of
- 8 the Presiding Member, and I -- I believe that
- 9 overall, his dedication, both -- both Committee
- 10 Members' dedication to the -- to the process has
- 11 been something that will ultimately contribute to
- 12 a better project for all -- process for all of us.
- 13 CHAIRMAN KEESE: Thank you, Commissioner
- 14 Moore.
- 15 COMMISSIONER PERNELL: Mr. Chairman.
- 16 CHAIRMAN KEESE: Commissioner Pernell.
- 17 COMMISSIONER PERNELL: On the motion,
- 18 Mr. Chairman, I'd like to first commend
- 19 Commissioner Laurie and -- and yourself as
- 20 overseeing a very difficult case that had a lot of
- 21 what I would term as ups and downs. One of the
- things that I'm convinced in the way in which this
- case was handled is that over the approximately
- 24 two and a half years, and 20 different workshops,
- 25 that it was a open process. I'm convinced that

1	the process do work. There wasn't any
2	encouragement for the communities not to
3	participate, given what I'm reading in the
4	Presiding Member's Proposed Decision.
5	I am also convinced that this project
6	will increase the reliability of the South Bay. I
7	am impressed with the amount of work that went
8	into this into this particular project, and I
9	would certainly hope that I don't get one with the
10	magnitude of this particular project.
11	(Laughter.)
12	COMMISSIONER PERNELL: But I do want to
13	commend those that were involved. The all of
14	the Intervenors and the community, Staff who have
15	worked very hard in bringing this project to us
16	today, as well as the Applicant.
17	I was surprised by something that was in
18	the Proposed Decision that said Los Angeles
19	generates approximately 87 percent of its demand,
20	San Diego is on the way of generating 100 percent,
21	and Santa Clara County generates approximately 14
22	percent of its load.
23	So the question for in my mind, is

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whether or not Santa Clara will step up to the

plate and consider generating more capacity within

24

25

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1
         its jurisdiction. I think it's only fair that we
 2
         spread this around. I've heard from legislators
         in LA, I've heard from council members in San
 3
         Diego, that says don't put it all in one spot,
         spread it around.
                   I am convinced that this increases the
         reliability, spreads it around a bit, and Mr.
         Chairman, again, thank you and Commissioner
 9
         Laurie, and I am in favor of the Presiding
         Member's Proposed Decision.
10
                   CHAIRMAN KEESE: Thank you.
11
12
                   All in favor.
13
                   (Ayes.)
14
                   CHAIRMAN KEESE: Opposed.
15
                   Adopted, five to nothing.
                   COMMISSIONER LAURIE: Mr. Chairman.
16
                   CHAIRMAN KEESE: Commissioner Laurie.
17
                   COMMISSIONER LAURIE: It has been a
18
         challenging, interesting experience for I think
19
20
         all of those involved. And I think, with rare
         exception, all of those involved participated
21
22
         utilizing the utmost of professionalism, courtesy,
23
         and respect for the process.
24
                   I think our Staff, Kerry Willis and Paul
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Richins as the managers of the legal and -- and

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1 management team, could not have done a better job.
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- 2 There was clearly 20 Staff people involved, more,
- 3 all -- all performed in an extraordinary fashion.
- I have said this before, and I'll say it
- 5 again, that I found the process grueling for the
- 6 Intervenors. And frankly, I think it reflected a
- 7 problem in the system, where it took this kind of
- 8 effort to allow these private individuals to be
- 9 able to express their views. Nevertheless, they,
- 10 too, showed the utmost respect for the system, and
- 11 again, I think they should be very proud of their
- 12 effort.
- So, I am pleased, Mr. Chairman, with the
- efforts of the participants, and hopefully their
- 15 efforts will be acknowledged.
- 16 Thank you.
- 17 CHAIRMAN KEESE: Thank you, Commissioner
- 18 Laurie. And I, too, acknowledge -- you know, it's
- 19 hard to -- to name the people, but Mr. Ajlouny,
- 20 Mr. Scholz, Mr. Williams, who joined us almost all
- 21 the way there, the -- certainly the staff of the
- 22 -- of the city who joined us, it was a long
- process. I did not make all the hearings that you
- 24 made. This was by far the longest and most
- 25 tedious process we've had.

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1
                   And I'm proud of the document that you
 2
         have come up with, that we have come up with. I
         think we've done a good job. I expect this to be
 3
         an exemplary power plant.
                   COMMISSIONER LAURIE: Yeah. Let me --
         and thank you, Mr. Chairman. Let me finally note,
         and I wanted to save for last. My personal thanks
         to Stan, and for the period when he was gone, to
 8
 9
         Gary. Their expertise, their commitment to the
         process, their -- their patience in dealing with
10
         me, was really quite extraordinary. The effort of
11
12
         Stan and the entire Hearing Office Staff, in
13
         helping to put together the decision, should again
         be acknowledged. And Stanley, I thank you very
14
15
         much.
                   CHAIRMAN KEESE: Thank you.
16
17
                   Thank you, folks. That one's adopted.
                   COMMISSIONER ROSENFELD: Mr. Chairman,
18
         way back at the beginning, we took up -- we took
19
        up regulations --
20
                   COMMISSIONER LAURIE: Wait, wait,
21
        wait --
22
23
                   CHAIRMAN KEESE: Hold -- can you hold
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very quietly. Thank you.

for a few moments, please? Or else we -- depart

24

25

1	Commissioner Rosenfeld.
2	COMMISSIONER ROSENFELD: Mr. Chairman,
3	this morning we took up siting regulations, and I
4	was confused and looking for my notes.
5	I would like to move to reconsider the
6	direction we gave legal counsel with respect to
7	Section 1710.
8	CHAIRMAN KEESE: A motion to reconsider
9	the vote taken this morning
10	COMMISSIONER PERNELL: Second.
11	CHAIRMAN KEESE: on the siting
12	regulations. A second.
13	All in favor?
14	(Ayes.)
15	CHAIRMAN KEESE: Opposed?
16	Five to nothing, to reconsider.
17	Commissioner Rosenfeld.
18	COMMISSIONER ROSENFELD: Mr. Chairman,
19	was simply confused this morning. I was looking
20	through my notes feverishly for what we talked
21	about on Friday, and I didn't get what was going
22	on, and so I would like an opportunity to vote on
23	that issue again.
24	COMMISSIONER MOORE: The matter can be

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25 -- I mean, we have the information --

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1 CHAIRMAN KEESE: We have -- we have it 2 in front of us.
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- 3 COMMISSIONER PERNELL: Mr. Chairman --
- 4 COMMISSIONER MOORE: I -- if I believe
- 5 -- if I recall correctly, the issue was whether or
- 6 not Commissioner Pernell's friendly amendment to
- 7 add the Section (h) back up into Section (a) would
- 8 carry. Am I correctly characterizing --
- 9 COMMISSIONER ROSENFELD: Well,
- 10 specifically, there were three lines within
- 11 Section (h), I thought it wasn't the whole thing,
- 12 which said discussions between the Staff and any
- 13 other party concerning the Staff's position on
- 14 recommendations regarding substantive issues shall
- 15 be noticed.
- 16 And --
- 17 CHIEF COUNSEL CHAMBERLAIN: Excuse me.
- Just for clarification, so the record is clear.
- 19 That language is not in subsection (h) today.
- 20 Subsection (h) contains language that is included
- in subsection (a) in the version that you looked
- 22 at this morning. But that language could be added
- 23 to the language that you -- that you intended to
- 24 adopt this morning.
- 25 CHAIRMAN KEESE: The -- thank you.

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1 Thank you, Mr. Chamberlain.
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- What -- what we had in front of us, I
- 3 believe, was a motion by Commissioner Laurie,
- 4 second by Commissioner Moore, to adopt the -- the
- 5 section as Commissioner Laurie laid it in front of
- 6 115.
- 7 We had a proposal for a friendly
- 8 amendment, which was declined. And therefore, we
- 9 voted it as Commissioner Laurie presented it. We
- 10 have now reconsidered it. I guess we're back to
- 11 the point, Commissioner Laurie --
- 12 COMMISSIONER MOORE: Where -- where we
- 13 are --
- 14 CHAIRMAN KEESE: -- having this
- 15 conversation --
- 16 COMMISSIONER MOORE: -- is -- right. So
- 17 we'll have to re-vote on Commissioner Laurie's
- 18 proposal. Should it fail, then an alternative
- 19 would have to be proposed.
- 20 CHAIRMAN KEESE: I will ask Commissioner
- 21 Pernell, are you still advocating the friendly
- 22 amendment?
- 23 COMMISSIONER LAURIE: Well, is there a
- 24 motion on the floor?
- 25 COMMISSIONER MOORE: Well, you -- you'd

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1 have to bring back -- actually, procedurally, we
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- 2 have to deal with -- with Commissioner Laurie's
- 3 proposal.
- 4 COMMISSIONER LAURIE: I -- I do not
- 5 intend to make any additional motions.
- 6 COMMISSIONER MOORE: Well --
- 7 COMMISSIONER PERNELL: Then we would
- 8 have to vote on --
- 9 COMMISSIONER MOORE: Then you'll have to
- 10 propose an alternative.
- 11 CHAIRMAN KEESE: No. If there are
- 12 any --
- 13 COMMISSIONER LAURIE: I -- I choose not
- 14 to.
- 15 CHAIRMAN KEESE: -- we have -- we have
- 16 three sections that we have adopted to add to the
- 17 start of the process on our hearings.
- 18 COMMISSIONER LAURIE: If somebody wants
- 19 to --
- 20 CHAIRMAN KEESE: Item 2 is here. If
- 21 somebody --
- 22 COMMISSIONER MOORE: Commissioner
- 23 Laurie --
- 24 CHAIRMAN KEESE: -- declines to make a
- 25 motion on item -- on an addendum --

1	COMMISSIONER MOORE: Someone else will
2	have to make a motion to reverse what we did.
3	CHAIRMAN KEESE: No. We have already
4	reconsidered.
5	COMMISSIONER MOORE: Oh, no. You
6	COMMISSIONER PERNELL: But we haven't
7	voted on
8	COMMISSIONER MOORE: you voted to
9	reconsider, and you now have something you have
10	to have something to reconsider. So
11	COMMISSIONER PERNELL: Mr. Chairman, I
12	think the way procedurally that we would vote to
13	deny the motion by Commissioner Laurie, and a
14	substitute motion will then be presented.
15	COMMISSIONER MOORE: You you're going
16	to have to vote to to
17	COMMISSIONER LAURIE: Why don't you
18	just
19	CHAIRMAN KEESE: Mr. Chamberlain
20	COMMISSIONER LAURIE: why don't you
21	just move to amend the motion.
22	CHIEF COUNSEL CHAMBERLAIN: Yeah. A
23	a motion
24	COMMISSIONER LAURIE: And and see if
25	your motion

1	CHIEF COUNSEL CHAMBERLAIN: a motion
2	to amend
3	COMMISSIONER LAURIE: to amend the
4	motion passes.
5	CHIEF COUNSEL CHAMBERLAIN: would be
6	in in order.
7	CHAIRMAN KEESE: Commissioner
8	COMMISSIONER PERNELL: If a motion to
9	amend is in order, Mr. Chairman, then
10	CHAIRMAN KEESE: Commissioner
11	Pernell
12	COMMISSIONER PERNELL: I will so move
13	to amend the motion to add, discussions between
1 4	Staff and any other party to modify the Staff
15	position or recommendations regarding substantive
16	issues shall be noticed.
17	CHIEF COUNSEL CHAMBERLAIN: And,
18	Commissioner Pernell, would you propose to add
19	that after the sentence about information includes
20	facts, data, measurements, calculations, and
21	analysis related to the project? So that it comes
22	before the the sentence with respect to

25 COMMISSIONER PERNELL: I'm not -- oh.

government agencies. That would be my

recommendation.

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1 Yes, that's fine.
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- 2 CHAIRMAN KEESE: We have a motion to --
- 3 to amend -- do we have a motion to amend, or do we
- 4 have an amended motion?
- 5 COMMISSIONER MOORE: You have a motion
- 6 to amend.
- 7 CHAIRMAN KEESE: We have a motion to
- 8 amend an earlier motion to approve Section 1710.
- 9 COMMISSIONER ROSENFELD: And I second.
- 10 CHAIRMAN KEESE: And we have a second by
- 11 Commissioner Rosenfeld.
- 12 COMMISSIONER MOORE: On --
- 13 CHAIRMAN KEESE: Motion by Commissioner
- 14 Pernell.
- 15 COMMISSIONER MOORE: -- on the motion.
- 16 CHAIRMAN KEESE: Commissioner --
- 17 COMMISSIONER LAURIE: May I have
- discussion on the motion, Mr. Chairman?
- 19 CHAIRMAN KEESE: Yes.
- 20 COMMISSIONER LAURIE: Oh, I'm sorry.
- 21 CHAIRMAN KEESE: Commissioner Moore --
- 22 COMMISSIONER LAURIE: I thought you --
- 23 COMMISSIONER MOORE: On -- on the
- 24 motion, Mr. Chairman.
- I -- I'm respectfully disagreeing.

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Well, I suppose I did that before, but now I'll articulate my disagreement with the motion as stated.
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I understand, I believe I've always understood the -- the worry that Commissioner Pernell has articulated. And I find myself in agreement with that in the sense that we don't want to leave any perception that there are any deals or any room for deals, especially on the part of Staff. And I guess I've been fairly outspoken in saying that I wanted to make sure that anything that even remotely resembled an agreement of any kind that would find its way into the PMPD should appear and be discussed in the public forum. And I -- I stand by that.

I do believe, though, that this motion will fetter the kind of discussions that Staff is allowed to have with an applicant, in the sense that there will be a tendency to try and discuss everything that might have even minor import in a noticed public forum, which will cause delays that are probably not productive in the long run. And frankly, which could result in a set of awkward discussions that are -- could be resolved just through a conversation.

1	So it seems to me that this ties the
2	hands of Staff in a in a way that local
3	government staff doesn't have to be enjoined, and
4	it seems to me it it constrains the process
5	more than it needs to be constrained.
6	I don't know that that this is
7	anything that I would term fatal. I'm certainly
8	not not trying to describe it as that. But I
9	don't think we need it. I think that that we
10	ought to lay down the law that if there is any
11	abuse in the form of what appears to be a deal, or
12	something close to it, that the Commissioners
13	could and should deal with that, probably in this
14	forum, in front of Staff and in front of the
15	administration of this agency. And that we could
16	make sure that that never even came close to
17	happening again.
18	But to go to the extent of of making
19	sure that there has to be a noticed public hearing
20	involves a time limit, a time declaration that I
21	think is not always advantageous for things that
22	really ought to be the product of some discussion,
23	and then have the product of that discussion
24	revealed in the full public forum.

So while, as I said, I don't think it's

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fatal, I don't believe it's needed, and as a
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- 2 consequence, with all due respect, I'm going to
- 3 oppose the motion.
- 4 CHAIRMAN KEESE: Commissioner Laurie.
- 5 COMMISSIONER LAURIE: Thank you, Mr.
- 6 Chairman.
- 7 As I attempted to note previously, this
- 8 Commission, and four members of this Commission,
- 9 voted to tell the legislature that we're going to
- 10 make Section 1710 more flexible. We told them
- 11 that that's what we were going to do. So in
- 12 looking at how to accomplish that, recognizing
- 13 that we have been discussing the issue for a
- 14 number of years, I simply noted that there was --
- 15 the only consensus was that the section had to be
- 16 cleaned up, because there are inconsistencies.
- 17 The section, as it existed prior to a
- 18 couple hours ago, permitted the Applicant and the
- 19 Staff to exchange information and discuss
- 20 procedural issues. Recognizing the sensitivities,
- I sought to accommodate all concerns by not going
- 22 beyond that, but simply clarifying
- 23 inconsistencies.
- 24 So the rule, as voted for this morning,
- 25 allowed all parties, not just the Applicant and

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1 Staff, but allowed all parties to meet for the
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- 2 purpose of exchanging information and discussing
- 3 procedural issues. That's all it did, utilizing
- 4 the same language that previously existed. So to
- 5 suggest that the adoption of such language
- 6 suddenly chills the public's ability to
- 7 participate is simply inconsistent with the facts.
- But going beyond that, by saying -- by
- 9 adopting the exchange of information language, but
- 10 by limiting it, well, then you are reversing your
- decision as contained in the SB 110 report.
- 12 You're not only not making it more flexible, you
- 13 are restricting it over what is currently
- 14 permitted.
- 15 I fully respect the ability of this
- 16 Commission to act as a Commission, and I will
- 17 honor the will of the majority. I believe,
- 18 however, you have to understand that you have just
- 19 taken a 180 degree turn from what you had
- 20 previously promised to do.
- 21 COMMISSIONER PERNELL: Mr. Chairman.
- 22 I'll be --
- 23 CHAIRMAN KEESE: Commissioner Pernell.
- 24 COMMISSIONER PERNELL: I'll be brief on
- 25 this.

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1
                   To the issue of whether or not we are
 2
         tying Staff hands, I don't believe so. The
         amended language says nothing in this section
 3
         shall prohibit meetings and communications with
         Staff for the purpose of exchanging information or
         discussing procedural issues. So it's there. And
         it's always been there. And -- and this is --
         somehow suggest that the system is broken, and I
         would advocate that it's not.
10
                   I don't think that this makes it less
11
         flexible. All we're saying here is you can
12
         discuss with Staff information, explain your
13
         application, but when it comes to substantive
         issues, that should not be discussed or negotiated
14
15
         without a public meeting. And I -- I don't think
         that's unreasonable to request.
16
17
                   And all I'm -- I have adopted, or at
         least agreed with Commissioner Laurie's language,
18
         but some of it I didn't particularly care for.
19
20
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least agreed with Commissioner Laurie's language,
but some of it I didn't particularly care for.

But this particular issue, I'm adamant about. No
substantive issues discussed or agreed upon
without a public notice. And I think that what
this does is ensure the public's trust in our
system. And to say anything other than that I
think would be a disservice to the public, as well

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1 as the Commission.
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23

24

25

2 I mean, it's -- it is not conceivable 3 for me, and maybe because I'm just a grass root activist who go to all of these city council meetings and -- and try and defend. But to be able to go behind closed doors with Staff, and discuss substantive issues without the public knowing it, when that public is -- is primarily at 9 work, I don't think is creating a level playing field. 10 So, Mr. Chairman, this is not trying to 11 12 tie Staff hands or make Staff any -- any 13 inflexible. This is not to try and revise 14 something that -- that is unreasonable. I just 15 think that when we are beginning to get to the nitty-gritty of these applications being put in 16 17 somebody's community, and substantive issues are discussed, that the public should know about it. 18 That's all. 19 20 CHAIRMAN KEESE: Thank you, Commissioner Moore -- Commissioner Pernell. 21 22

I will say that I join Commissioner

Moore in feeling that this is not the most

significant issue that we've had before us. I

don't think it's a make or break issue either way.

1	I believe our Staff has honored their
2	commitment to the public regularly, and I believe
3	that perhaps with the adoption of either one of
4	these, our Staff would continue to do the same
5	thing.
6	I'm going to join you, Commissioner
7	Pernell, because I do believe it's an issue, it's
8	been presented as an issue of perception. And I
9	believe that we must convey to the public that
10	this is an open process. They should come up with
11	that perception. And on that basis, I will
12	support your motion.
13	Do we have any further comments?
14	We have a motion and a second to amend
15	the motion with regard to Item 2, Section 1710.
16	All in favor?
17	(Ayes.)
18	CHAIRMAN KEESE: Opposed?
19	(Nays.)
20	CHAIRMAN KEESE: Adopted, three to two.
21	We now have an amended motion before us.
22	Is there any further comment?
23	All in favor of the amended motion.

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CHAIRMAN KEESE: Opposed.

(Ayes.)

24

25

1	(Nays.)
2	CHAIRMAN KEESE: Adopted, three to two.
3	COMMISSIONER LAURIE: Mr. Chairman, as
4	Presiding Member of the Licensing Committee, it'd
5	be my obligation to implement the proposed
6	regulations. I cannot in good faith do that. I
7	hereby withdraw from the Licensing Committee,
8	effective immediately.
9	CHAIRMAN KEESE: Thank you.
10	Well, I guess Mr. Ajlouny, you there?
11	We at the very end of our hearings we do give
12	allow public comment. This is usually on
13	issues that haven't been in front of us. Very
14	briefly.
15	MR. AJLOUNY: Well, it is an issue.
16	Yeah, my name is Issa Ajlouny. And I
17	just want to make a serious request that the CPM
18	elected for our Metcalf Energy Center in San Jose
19	be Nancy Tranas. Just a respected request,
20	because I I know that others that have been
21	involved in all the all the phone calls I made
22	and talking to other people, other people seem to
23	always side towards the Applicant, and I want
24	someone to represent the community.

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And I'm requesting respectfully, and --

25

1	CHAIRMAN KEESE: I'm sure people
2	MR. AJLOUNY: take it seriously
3	CHAIRMAN KEESE: I'm sure people in
4	this room will hear you, because the Commissioners
5	up here have nothing to say about that decision.
6	MR. AJLOUNY: You have nothing to say
7	about that? Okay.
8	CHAIRMAN KEESE: That's not in our
9	that's a management decision.
10	MR. AJLOUNY: Okay. Fine.
11	CHAIRMAN KEESE: Thank you.
12	This meeting is adjourned.
13	(Thereupon, the Business Meeting
14	was adjourned at 2:34 p.m.)
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CERTIFICATE OF REPORTER

I, , an Electronic Reporter,

do hereby certify that I am a disinterested person

herein; that I recorded the foregoing California

Energy Commission Business Meeting; that it was

thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Business Meeting, nor in any way interested in the outcome of said Business Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of September, 2001.

JAMES RAMOS